

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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ZONING COMMISSION

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SPECIAL MEETING
1147th MEETING SESSION (5TH OF 2003)

+ + + + +

MONDAY

APRIL 28, 2003

+ + + + +

The Special Meeting of the District of Columbia Zoning Commission convened at 4:51 p.m. in Room 220 South, 441 4th Street, N.W., Washington, D.C. 20001, Carol J. Mitten, Chairperson, presiding.

ZONING COMMISSION MEMBERS PRESENT:

CAROL J. MITTEN	Chairperson
ANTHONY J. HOOD	Vice Chairperson
JAMES H. HANNAHAM	Commissioner
JOHN G. PARSONS	Commissioner

ZONING COMMISSION STAFF PRESENT:

ALBERTO BASTIDA	Secretary
SHARON SANCHEZ	Office of Zoning

OFFICE OF PLANNING STAFF PRESENT:

ELLEN McCARTHY	Office of Planning
JOEL LAWSON	Office of Planning
JENNIFER STEINGASSER	Office of Planning

D.C. OFFICE OF CORPORATION COUNSEL:

ALAN BERGSTEIN, Esq.

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P-R-O-C-E-E-D-I-N-G-S

(4:51 p.m.)

CHAIRPERSON MITTEN: Good afternoon, ladies and gentlemen. This is a special public meeting of the District of Columbia Zoning Commission for Monday, April 28, 2003. My name is Carol Mitten, and joining me this afternoon are Vice Chairman Anthony Hood and Commissioners John Parsons and James Hannaham. Mr. Hannaham is going to be with us in just a moment.

Copies of our agenda are in the wall unit near the door if you would like to follow along. I'm not aware that we have any preliminary matters, so I will just move into the first item, which is our consent calendar item.

II. CONSENT CALENDAR

Z.C. CASE NO. 03-14

(PETITION FROM ANC 3F TO AMEND SECTION 3202.5(a))

CHAIRPERSON MITTEN: Mr. Bastida, did you have anything by way of introduction on our consent calendar item?

SECRETARY BASTIDA: No, Madam Chairman, just that we had provided you with the entire record for the previous meeting, and we would request that you take an action on the matter. Thank you.

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1 CHAIRPERSON MITTEN: Thank you.

2 I would like to ask Mr. Bergstein -- he
3 has given us some advice on the matter, and I would
4 like Mr. Bergstein just to summarize that for the
5 record, if you would.

6 MR. BERGSTEIN: Thank you.

7 With respect to the petition that you have
8 before you, I think that our office agrees that, in
9 all likelihood, the Zoning Commission, when it went
10 through its various amendments to what we call the
11 setdown rule or the vesting rule, inadvertently
12 repealed language regarding the sufficiency of
13 information that needs to be provided by an applicant
14 in order for the application to be processed under
15 existing zoning if the Zoning Commission is about to
16 consider a change to the zoning designation. But the
17 difference we have with the petition is that we feel
18 that it also leaves out introductory language which
19 for some reason doesn't appear in either the previous
20 version of Title 11 or the current version of Title
21 11. So what we have given you is a memo that shows
22 you on the first page in italics the language that we
23 believe has never been removed from this provision and
24 then the language that's underlined is the language
25 that petitioner is suggesting which we believe

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1 captures the thought of the Zoning Commission in terms
2 of the sufficiency of information which was contained
3 in another provision that was repealed but referenced
4 in this provision.

5 It's a very complex series of changes that
6 the Zoning Commission made, but we believe that, in
7 fact, if you propose this language, this provision
8 will be returned to the original intent of the
9 Commission, and we believe you can do it on a consent
10 calendar basis because you are not proposing a change
11 in policy; you're merely attempting to correct what
12 amounted to an inadvertent repeal and an incorrect
13 codification of Title 11.

14 CHAIRPERSON MITTEN: All right. So then
15 just to be clear, in addition to the language that's
16 being recommended to us by ANC-3F to amend Section
17 3202.5(a), you're proposing to insert a sentence at
18 the beginning of that subsection that says, "If the
19 application is filed on or before the date on which
20 the Zoning Commission makes the decision to hold a
21 hearing on the amendment, the processing of the
22 application and completion of the work shall be
23 governed by Section 3202.4."

24 MR. BERGSTEIN: That is correct.

25 CHAIRPERSON MITTEN: All right. I just

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1 wanted to be clear.

2 Any questions for Mr. Bergstein before we
3 go on?

4 VICE CHAIRPERSON HOOD: No questions.

5 CHAIRPERSON MITTEN: Then I would move the
6 amended language that has been refined by Mr.
7 Bergstein to 3202.5(a).

8 VICE CHAIRPERSON HOOD: Second.

9 CHAIRPERSON MITTEN: Any discussion?

10 (No response.)

11 CHAIRPERSON MITTEN: All those in favor,
12 please say aye.

13 (Chorus of ayes.)

14 CHAIRPERSON MITTEN: Mr. May votes aye by
15 absentee vote.

16 All those opposed, please say no.

17 (No response.)

18 CHAIRPERSON MITTEN: Ms. Sanchez, would
19 you record the vote?

20 MS. SANCHEZ: Yes. Staff would record the
21 vote five to zero to zero, Commissioner Mitten moving,
22 Commissioner Hood seconding, Commissioners Hannaham
23 and Parsons in favor, and Commissioner May in favor by
24 absentee ballot.

25 CHAIRPERSON MITTEN: Thank you.

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1 I just would like a clarification, Mr.
2 Bergstein, if you can give it to us. Obviously
3 something happened that led to the publication of the
4 setdown rule being not what was intended by the
5 Commission. Is that a flaw on the part of the
6 Commission? Is it a flaw on the part of the staff, of
7 the Office of Zoning, or is it a flaw on the part of
8 the Office of Documents?

9 I ask that not to place blame, but to find
10 where the weak link is so that we can assure that it
11 doesn't happen in the future.

12 MR. BERGSTEIN: I think this is -- I said
13 at one point that this section is almost doomed to
14 miscodification because every way that a section could
15 be miscodified, this was. But essentially what
16 happened was that there was another section called
17 3202.5 that dealt with applications before 1958. It
18 was a grandfathering provision. What happened here
19 was -- sometimes it's better, when you repeal
20 something, not to replace it with another provision
21 that has the same number because that's the confusion
22 that happened here.

23 CHAIRPERSON MITTEN: Okay.

24 MR. BERGSTEIN: What we have now before us
25 was 3202.6, and when they tried to recodify -- when

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1 the Commission -- 3202.6 had a cross-reference to
2 3202.5, and it was a very important cross-reference.
3 When the Commission repealed 3202.5, they forget that
4 the section that was 3202.6 wouldn't make a lot of
5 sense without the cross-reference, which was then
6 repealed. So I think the great flaw here is when the
7 Commission did it, it forgot to ask itself, "Well,
8 there's a cross-reference in 3202.6. Shouldn't we now
9 insert that language in this provision because the
10 cross-reference no longer appears?" And that's where
11 things went wrong.

12 CHAIRPERSON MITTEN: Okay. So it's a
13 lesson for us.

14 MR. BERGSTEIN: I guess fundamentally it
15 is, yes.

16 CHAIRPERSON MITTEN: Okay. Good. Well,
17 we hopefully won't make that mistake again. Thank
18 you.

19 III. PROPOSED ACTION

20 Z.C. CASE NO. 02-42 (W-0)

21 CHAIRPERSON MITTEN: All right. Then the
22 next item on the agenda is proposed action for the W-0
23 text amendment, which is Case Number 02-42, and we had
24 a hearing on this and we had a lot of participation
25 from folks that live along the southwest waterfront

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1 who we tried to assure that this is merely a text
2 amendment and it is not being proposed for mapping
3 anywhere at the moment other than on the proposed site
4 of the Georgetown Boathouse and in the Southeast
5 Federal Center area, so I hope they have been somewhat
6 comforted by that at this point.

7 What I would like to do is ask the Office
8 of Planning to freely engage with us as we go through
9 -- we will probably have a series of questions, but I
10 would like to just go through section by section and
11 see if any of the Commissioners have any particular
12 questions or concerns, and then we will just hopefully
13 go through this fairly efficiently and just ask
14 questions or state concerns as we go along. Is that
15 all right with everyone?

16 VICE CHAIRPERSON HOOD: I don't know when
17 an appropriate time -- I know we're going to go
18 through what's proposed, but we got something from T.
19 Rodney Opperman.

20 CHAIRPERSON MITTEN: Yes.

21 VICE CHAIRPERSON HOOD: And it's dealing
22 with congressional -- I guess a mandate of fish wharf,
23 and I kind of want to get some clarification exactly
24 of what the intent or what was Congress saying when
25 they ruled on this report. I really don't -- I didn't

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1 understand it, so I was hoping to get some
2 clarification. Maybe this is an appropriate time,
3 going into what we're getting ready to get into. So I
4 would ask Mr. Bergstein, if he could, if he would just
5 give me a quick explanation.

6 MR. BERGSTEIN: Well, actually, Mr. Hood,
7 I didn't explore that issue very deeply because my
8 concern is that it's appropriately the Zoning
9 Administrator's responsibility to determine when a
10 property is subject to zoning or not, and for me to
11 opine upon that has really no value because my views
12 aren't binding upon anybody.

13 So I did not address that and I was going
14 to write to the gentleman to indicate that in terms of
15 the applicability of a zoning designation to property
16 which has some relationship with the Federal
17 Government, it is almost on a case-by-case basis and
18 requires a lot more research than even just looking at
19 an act of Congress.

20 It would be both premature and useless for
21 me to give an opinion on that, and what really should
22 be done in this instance -- well, first, I think it's
23 awful premature to even go into this because there has
24 been no proposed designation for that property, but
25 were there to be one, ultimately I think the place to

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1 start on it the way the zoning regulations and the
2 zoning scheme is set up is to the Zoning
3 Administrator, who is the first interpreter of the
4 zoning regulations and their applicability. If
5 someone disagreed with the Zoning Administrator, that
6 would come up to the BZA and perhaps ultimately to the
7 Zoning Commission, and it's in my capacity as legal
8 advisor to the BZA and the Zoning Commission that I
9 would get involved.

10 So I realize it's a roundabout way of
11 saying I don't have an answer for you, but I really
12 believe that it would be inappropriate for me to give
13 an answer at this time.

14 VICE CHAIRPERSON HOOD: Thank you, Mr.
15 Bergstein.

16 Thank you, Madam Chair.

17 CHAIRPERSON MITTEN: Okay. Let's start
18 with the definitions. Did anyone have any questions
19 about the definitions in 199 that are being proposed?
20 Any questions?

21 (No response.)

22 CHAIRPERSON MITTEN: All right. In 601,
23 the use as a matter of right, and C-R, any questions?

24 (No response.)

25 CHAIRPERSON MITTEN: All right. 900, the

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1 general provisions of the waterfront districts.

2 I was just going to suggest, in 900.3
3 where it describes -- first the W-0 is described as
4 low density, and then the W-1 is described also as low
5 density. Could that possibly be modified to moderate
6 because moderate is between low and medium is probably
7 actually more consistent with the degree of density of
8 some of the moderate-density residential districts.
9 So if that doesn't give anyone any heartburn, I would
10 propose moderate there.

11 In 900.7, perhaps this is a question for
12 the Office of Planning, the last sentence, "In
13 addition, no building or structure shall be
14 constructed, placed or moored in, on or over Class B
15 waters except in accordance with the D.C. water
16 quality regulation 1104.4." Most of that is new
17 information to me, so, you know, we sort of had taken
18 pains in other cases not to give the appearance of
19 having jurisdiction over things that we don't, so can
20 you just share with us what is behind the inclusion of
21 that language?

22 MR. LAWSON: The clause is actually not a
23 necessary clause. We included it mainly as a
24 reference back to this other document so that
25 applicants, people who were considering doing

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1 something on or adjacent to the water, that they would
2 be aware of this regulation. Quite honestly, they
3 would be made aware regardless once they entered into
4 the building stage.

5 CHAIRPERSON MITTEN: Okay.

6 MR. LAWSON: So it could come out without,
7 by law, losing anything.

8 CHAIRPERSON MITTEN: Okay. I would
9 advocate, then, that we delete that second sentence
10 from 900.7. All right.

11 Anything else in 900?

12 (No response.)

13 CHAIRPERSON MITTEN: 901, uses as a matter
14 of right in the W zones. I think this is mostly just
15 sort of housekeeping type stuff.

16 The question that I had in 901.5 is we use
17 the word "temporary," and it's used elsewhere, too,
18 but these are the first occasions. 901.5(b), boat
19 construction on a temporary basis; 901.5(e), temporary
20 market for produce, arts and crafts. I think we
21 should make some effort to define "temporary."

22 I would suggest, and, Mr. Lawson or Ms.
23 Steingasser, you can respond to this, for (e), what
24 comes to mind there would be seasonal as opposed to
25 temporary, so that it's implied that it's not

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1 year-round, but I can't really do the same thing for
2 (b), so I was wondering if you could give us any
3 guidance on a way to define that, and if you can't at
4 the moment, maybe we can do that for final action,
5 but, you know, we have run into situations where, you
6 know, if we don't define what "temporary" means, that
7 it doesn't really mean anything and we end up with a
8 fight on our hands. Do you have any thoughts right
9 now on (b), or would you like to think about that one
10 some more?

11 MR. LAWSON: We probably should think
12 about it a bit, but certainly the distinction is that
13 a temporary boat construction is not a permanent
14 facility that's constantly kind of constructing boats
15 on one site; it's intended as kind of a one off. So
16 I'm not sure if something as simple as "non-permanent:
17 or --

18 CHAIRPERSON MITTEN: That doesn't help. I
19 mean, what's -- "Well, we intended for it to be
20 non-permanent, but then we have been here for ten
21 years, but we're going to move." You know what I
22 mean? So anything that you can just do to refine that
23 a little bit more I would appreciate.

24 VICE CHAIRPERSON HOOD: Madam Chair, can
25 we go back to 901.5(a)?

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1 CHAIRPERSON MITTEN: Sure.

2 VICE CHAIRPERSON HOOD: I'm concerned
3 about the language in (a) towards the end. It says,
4 "And necessary associated facilities." To me, that
5 just leaves an open -- I don't know. Maybe you have a
6 definition for it. I don't know what "necessary
7 associated facilities" -- what it may mean to one
8 person may mean something totally -- and then I can
9 just see an argument for some, I don't want to say
10 undesirables, but some different things eventually
11 making their way down to the waterfront.

12 MS. STEINGASSER: Would it be more clear
13 if we said "necessary support facilities"?

14 VICE CHAIRPERSON HOOD: Support to the
15 waterfront.

16 MS. STEINGASSER: Support to the publicly
17 accessible park, playground, athletic field. That
18 would get more towards restrooms --

19 VICE CHAIRPERSON HOOD: Okay. I would
20 feel -- yes, I would be more comfortable.

21 CHAIRPERSON MITTEN: Okay. So we'll
22 change "associated" to "support."

23 MR. BERGSTEIN: Madam Chair, in the
24 proposed rule, would you be interested in soliciting
25 comments on "temporary" in the context of (b)?

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1 CHAIRPERSON MITTEN: We can do that. How
2 can we call it out that we want people to focus on it?

3 MR. BERGSTEIN: Well, as part of the
4 notice of -- actually, a notice of proposed rulemaking
5 is usually a one-paragraph introduction, so adding
6 another paragraph saying that the Commission would be
7 particularly interested in receiving public comments
8 refining the term "temporary" as it's used in that
9 provision would be easy to do and be also very
10 obvious.

11 CHAIRPERSON MITTEN: I think that would be
12 great because, in fact, if I have -- I think I have --
13 I think we talked about this at setdown, too, and I
14 think the intent was at that point to solicit comment,
15 and I don't think we succeeded in eliciting it. So if
16 we could do that and call it out, I would appreciate
17 that.

18 VICE CHAIRPERSON HOOD: Also, Madam Chair,
19 in agreement with what you are saying about the
20 temporary issue, I wonder if it would be advisable if
21 we put in parentheses "one time only." It goes back
22 to your earlier statement about temporary. Hopefully
23 we can look into that before we do our final proposal.

24 CHAIRPERSON MITTEN: Okay.

25 COMMISSIONER PARSONS: Well, the temporary

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1 market for produce implies a seasonal use such as at
2 the Kennedy Stadium where people drive their trucks
3 into that parking lot every weekend all summer, and I
4 wonder if that's what we're really talking about here.

5 I mean, are we talking more about an arts-and-crafts
6 festival like the one the Smithsonian had this weekend
7 for three days and it goes away, or is it something
8 that shows up every Saturday morning, which is a much
9 different kind of use.

10 CHAIRPERSON MITTEN: What were you guys
11 thinking about?

12 MR. LAWSON: We were thinking actually it
13 could be either one.

14 CHAIRPERSON MITTEN: Oh, either one.

15 MR. LAWSON: What it couldn't be is it
16 couldn't be a market setup that would stay there all
17 year long or even all season long, I think.

18 CHAIRPERSON MITTEN: Okay. How about
19 seasonal or periodic or something like that?

20 COMMISSIONER PARSONS: So it would
21 preclude permanent or semi-permanent structures. In
22 other words, it would be -- you wouldn't even know it
23 was there on Monday morning.

24 MR. LAWSON: That's right. I believe that
25 this provision would preclude that. Of course, there

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1 are other provisions in W-0 that would allow that kind
2 of a retail, a more permanent retail use through
3 special exception.

4 COMMISSIONER PARSONS: Such as a public
5 space permit for tables that we have on the streets
6 outside of a restaurant here in Washington, that kind
7 of use where a restaurant is adjacent to the W-0 and
8 they could use it on a temporary basis. I shouldn't
9 have thrown public space permit into this. That's not
10 what I meant.

11 CHAIRPERSON MITTEN: Why don't we say
12 "seasonal market for produce, arts and crafts, with
13 non-permanent structures."

14 COMMISSIONER PARSONS: Yes.

15 CHAIRPERSON MITTEN: Okay.

16 COMMISSIONER HANNAHAM: Another way to
17 cite this is to call it "occasional."

18 CHAIRPERSON MITTEN: That's true, too.

19 COMMISSIONER PARSONS: That's a good word.

20 CHAIRPERSON MITTEN: I like that. Yes,
21 that's good.

22 COMMISSIONER HANNAHAM: Occasional can
23 just be on any occasion that's appropriate.

24 CHAIRPERSON MITTEN: There you go. That
25 sounds good. Okay. I think we've got a winner there.

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1 COMMISSIONER PARSONS: I'm sorry, I missed
2 one way, way, way back in 901(b).

3 COMMISSIONER HANNAHAM: That could go for
4 (b) or (e). You wanted to think of substituting
5 something for "temporary."

6 CHAIRPERSON MITTEN: Okay. We could put
7 in "occasional" on (b), too, and just ask -- we could
8 still solicit comments.

9 COMMISSIONER HANNAHAM: Still solicit,
10 yes.

11 CHAIRPERSON MITTEN: Yes.

12 Okay. Mr. Parsons.

13 COMMISSIONER PARSONS: I'm sorry. I
14 wanted to go back to 901.1, which is at the bottom of
15 one page, top of the next, and the word which appears
16 elsewhere in the regulations "minor repairs." That
17 kind of fits into the same category. What is minor?
18 I mean, I think the record will indicate that there is
19 need for repair of boats here in the city and minor
20 implies maybe something that you pull up to the dock
21 and somebody helps you with a broken antenna. It does
22 say "marine engines." So what is your feeling about
23 the word "minor"? Can you pull a boat out of the
24 water and fix a hole in the bottom?

25 MR. LAWSON: I think that's actually a

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1 really good question. That isn't what I had
2 anticipated when we wrote this. I was anticipating
3 something of even a more minor nature than that,
4 mainly because pulling the boat out of the water
5 involves whole new sets of equipment and whole new
6 kinds of businesses going on on the waterfront which
7 can be noisy, which can use a lot of noxious
8 chemicals, that kind of stuff.

9 On the other hand, it's a necessary type
10 of a business associated with boat owners, and boats
11 do have to be pulled out of the water for even some
12 minor uses like painting or scraping the bottom. So
13 it's a good question.

14 COMMISSIONER PARSONS: So did you mean
15 that in order to go beyond minor repairs, it would be
16 a special exception or you really haven't thought --

17 MR. LAWSON: My intention was really more
18 an individual owner working on an individual boat or
19 hiring an individual contractor as opposed to
20 large-scale businesses working, large-scale
21 boat-repair businesses.

22 You know, again, I think that those uses
23 are probably appropriate. They may be more
24 appropriate for some of the more denser zones that
25 allow boating type uses like W-1 or even C-R.

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1 CHAIRPERSON MITTEN: Let me just remind
2 everybody what section we're in. We're in 901.1,
3 which are the following uses shall be permitted in the
4 W-1, W-2, W-3. We're talking about those denser
5 zones; we're not talking about W-0 at the moment.

6 So this may be an opportunity to have some
7 language that is distinctly different as it relates to
8 repairs in W-1, 2 and 3, rather than in W-0, so we
9 might want to have a little bit more intense use
10 there.

11 COMMISSIONER PARSONS: In other words,
12 remove the word "minor" here.

13 CHAIRPERSON MITTEN: Yes. Yes. What do
14 you think about that, Mr. Lawson? Remove the word
15 "minor" in this section, but retain it when we go to
16 whatever the section is --

17 COMMISSIONER PARSONS: 901.5.

18 CHAIRPERSON MITTEN: Right. 909 deals
19 with uses -- the marina use in W-0 specifically.
20 There we could retain it in 919.2, we could retain
21 "minor."

22 What do you think about that, Mr. Lawson?

23 MR. LAWSON: I think that's a workable
24 solution. I suspect that there may be marina owners
25 who will be concerned that we're establishing

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1 different uses for marinas just because they happen to
2 be in different zones. That would -- I'm sort of
3 thinking this through as we're going along and I
4 suspect that that may be an issue that would crop up
5 with some of the existing marinas.

6 CHAIRPERSON MITTEN: Can I ask you, we
7 have existing marinas in existing W-1, W-2, W-3, who
8 may actually be doing something more than what we
9 might be thinking of as minor, so it's actually to
10 their benefit that we remove the "word," yes?

11 MR. LAWSON: That's absolutely true, yes.

12 CHAIRPERSON MITTEN: Okay. So can we
13 agree that we will take the word "minor" out of
14 901.1(n) and then we will retain it in 919.2 because
15 that applies specifically to W-0? Do we agree about
16 that? Is that helpful to addressing --

17 VICE CHAIRPERSON HOOD: Let me just ask a
18 point of clarification. When we say "minor," I'm
19 thinking about the type of work -- and I think, Mr.
20 Lawson, you mentioned about patching the bottom of a
21 boat. When I was looking at it, I thought minor, for
22 example, was changing a spark plug, and I just don't
23 know how specific we can be, but what may be minor to
24 one mechanic may not be minor to the next, and you may
25 wind up having people down on the waterfront changing

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1 motors and whatnot, and I'm not sure if that's exactly
2 the line you're going. So I don't know if what you
3 propose, Madam Chair, will solve that problem, but
4 minor can be interpreted in different ways.

5 CHAIRPERSON MITTEN: Let me make this
6 suggestion, then, that for now, we remove the word
7 "minor" from (n), we ask Mr. Lawson to maybe revisit
8 some of the existing marina uses and the types of
9 repairs that they do so that we could possibly say in
10 (n) for final action "repairs to boats and marine
11 engines including the use of hoists" or whatever, you
12 know, stuff that they use so we can be more specific
13 about that.

14 MR. LAWSON: We may be able to address it
15 simply by, in the W-1, 2 and 3, saying that boat
16 repair business -- boat repair as a business is a
17 permitted use, whereas in the W-0 zone, it would not
18 be. So minor repair would then be more the kind of
19 thing that Commissioner Hood was talking about, small
20 repairs to individual boats by owners.

21 CHAIRPERSON MITTEN: But in the meantime,
22 before we do that -- I just want to make sure we're
23 not causing a problem for anyone in the marina that's
24 doing something that wouldn't fall into that category.

25 Can we go on, then?

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1 COMMISSIONER PARSONS: Yes.

2 CHAIRPERSON MITTEN: Is that okay, Mr.
3 Parsons? Okay.

4 Okay. Anyone else in 901? Any other
5 comments in 901?

6 (No response.)

7 CHAIRPERSON MITTEN: Okay. 902,
8 prohibited uses in W. 905, Planning Office review in
9 the W zones. I did want to make a comment at this
10 point, because there were some people that were
11 concerned, and I think the ANC-6D, which is the only
12 ANC that weighed in on this, they were concerned that
13 somehow the Office of Planning was given absolute
14 discretion over the special exception uses somehow to
15 the exclusion of ANCs, and they said specifically the
16 Office of Planning is now being put on an equal
17 footing with ANC. Well, they have always been on an
18 equal footing in terms of great weight, and this is
19 not meant to give the Office of Planning
20 decisionmaking authority, just guidance for the
21 content of their reports. So I just wanted to say
22 that.

23 Anything in 906, hospitals and clinics in
24 W-1 through 3? 907, utilities. 908, bowling alleys.

25 COMMISSIONER PARSONS: I -- whoa.

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1 CHAIRPERSON MITTEN: Just keep in mind,
2 these are existing provisions.

3 COMMISSIONER PARSONS: So if we were to
4 take exception to this, we would need to readvertise
5 it.

6 CHAIRPERSON MITTEN: Yes. And I'm not
7 suggesting that if you want to take exception to it,
8 that you shouldn't, but --

9 COMMISSIONER PARSONS: No.

10 CHAIRPERSON MITTEN: Okay. I do --

11 COMMISSIONER PARSONS: Hopefully the land
12 is too expensive to build a bowling alley.

13 CHAIRPERSON MITTEN: I think it probably
14 is. I think it probably is. I would like to change
15 in 908.4, if we could do this without causing any
16 problems, to change the D.C. Office of Planning and
17 Development to just the D.C. Office of Planning, which
18 is their correct name.

19 909, manufacturing and processing.

20 VICE CHAIRPERSON HOOD: This is another
21 one, Madam Chair, I would hope -- I don't know if we
22 can look at it right now, but when you say
23 "processing," for some reason, processing in this city
24 means a variety of uses.

25 CHAIRPERSON MITTEN: Yes, it does. And I

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1 would say, though, that that's a special exception use
2 that would have to meet the criteria set forward for
3 things like enhancing the visual and recreational
4 opportunities offered by the waterfront, and I'm not
5 sure that some of the processing facilities that you
6 might have in mind would meet that test, so maybe that
7 will --

8 VICE CHAIRPERSON HOOD: You would be
9 surprised.

10 CHAIRPERSON MITTEN: Okay. 910,
11 warehouses and wholesalers; 911, business trades,
12 service trades; 912, private schools and trade
13 schools; 913, community based residential facilities;
14 914, antennas; 915, miscellaneous.

15 MS. STEINGASSER: Madam Chair?

16 CHAIRPERSON MITTEN: Yes.

17 MS. STEINGASSER: Under antennas, I would
18 just like to point out that Sections 211 and 212 will
19 no longer be existing and this will be amended to
20 reflect the new chapter.

21 CHAIRPERSON MITTEN: Okay. Good. I tried
22 not to focus on -- I try to focus on only one text
23 amendment at a time, so I'm glad that you are going to
24 be following up on those changes.

25 915, miscellaneous uses; 916, colleges and

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1 universities; 917 -- now we're getting into the meat
2 of it -- uses subject to special exception in W-0.

3 COMMISSIONER PARSONS: I wonder if we
4 might look at this concept of boat repair here in (i)
5 and (k).

6 CHAIRPERSON MITTEN: And (j) maybe.

7 COMMISSIONER PARSONS: Uh-huh. I mean, if
8 we're going to allow somebody to build under one
9 proposal a 110-foot sloop, certainly repairing a
10 50-foot boat seems -- I guess the theory is that we
11 would zone something -- in order to get a boat out of
12 the water of that size, you have to have a ramp and a
13 hoist. You have to have access to the shoreline. So
14 to zone it W-1 just because it's a boat repair
15 facility is strange to me, I guess, because we all
16 imagined this W-0 zone being continuous if we can
17 along the waterfront.

18 CHAIRPERSON MITTEN: Just to add to what
19 you're starting to express, at the hearing, someone
20 from the live-aboard community was suggesting that
21 this is -- in fact, boat construction and so forth is
22 incompatible with residential use, not to say that
23 there's not residential uses on land being proposed,
24 but the floating homes. So, you know, there's a
25 compatible issue there too potentially, you know,

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1 depending on where this might be mapped and how things
2 might develop in a particular area.

3 So did you have a specific suggestion or
4 did you have a question for Office of Planning?

5 COMMISSIONER PARSONS: Well, I was
6 thinking from the first time we talked about this five
7 minutes ago until now that we might want to allow boat
8 repair as a special exception in W-0, and the fact
9 that it's not mentioned anywhere here -- there's
10 bicycle repair.

11 CHAIRPERSON MITTEN: Boat repair. Okay.

12 COMMISSIONER PARSONS: So I was suggesting
13 (k), I mean, that we may add boat repair to that as
14 well.

15 CHAIRPERSON MITTEN: Okay. What do you
16 think -- do you have any concerns about boat
17 construction?

18 COMMISSIONER PARSONS: Yes. I think -- I
19 hate to use the word "temporary" again --

20 CHAIRPERSON MITTEN: That's already
21 permitted. In 901.5(b), what we were talking about
22 before, that's permitted as a matter of right. So
23 this would be boat construction on a permanent basis
24 permitted by special exception.

25 COMMISSIONER PARSONS: Where did that come

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1 from? Was that in the advertisement?

2 CHAIRPERSON MITTEN: I don't know.

3 COMMISSIONER PARSONS: Maybe I missed it.

4 It's all right. I think that given the limited
5 amount of places we have to zone this, I can't imagine
6 that kind of use being compatible with what we're
7 trying to do on the Anacostia waterfront. If
8 temporary is provided for, that's fine, but a boat
9 construction yard?

10 CHAIRPERSON MITTEN: Yes. And this is the
11 thing. I guess --

12 COMMISSIONER PARSONS: No.

13 CHAIRPERSON MITTEN: What it says in the
14 introduction is that these uses, this list, shall be
15 permitted by special exception in the W-0 district if
16 the uses are considered to be appropriate and
17 furthering the objectives of the waterfront district.

18 So then it's a question of, okay, do we really
19 anticipate that that will ever be the case?
20 Otherwise, we shouldn't set forth the expectation that
21 that use --

22 COMMISSIONER PARSONS: I think we ought to
23 reconsider that.

24 CHAIRPERSON MITTEN: Okay.

25 COMMISSIONER PARSONS: Certainly rental

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1 and sales would be okay, but --

2 CHAIRPERSON MITTEN: So why don't we just
3 say, then, "boat repair, rental and sales" --

4 COMMISSIONER PARSONS: Yes.

5 CHAIRPERSON MITTEN: -- and eliminate
6 "construction."

7 COMMISSIONER PARSONS: Good.

8 CHAIRPERSON MITTEN: Okay. I thought we
9 could consolidate music store and musical instruments.
10 I would think that you could sell musical instruments
11 in a music store.

12 MR. BERGSTEIN: I'm sorry. Could I go
13 back to boat repair, rentals and sales?

14 CHAIRPERSON MITTEN: Yes.

15 MR. BERGSTEIN: Is the "and" supposed to
16 mean that it has to be done -- all three of these
17 things are done as a single use, or it would be "or
18 sales"?

19 CHAIRPERSON MITTEN: That's a good --

20 COMMISSIONER PARSONS: Perfect.

21 MR. BERGSTEIN: "Or sales."

22 COMMISSIONER PARSONS: Yes.

23 CHAIRPERSON MITTEN: -- suggestion made in
24 the form of a question.

25 VICE CHAIRPERSON HOOD: Madam Chair, can

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1 we go back to (z), legitimate theater?

2 CHAIRPERSON MITTEN: Yes.

3 VICE CHAIRPERSON HOOD: I guess I need --
4 what is a legitimate theater?

5 MS. STEINGASSER: "Legitimate theater" is
6 the definition that currently exists in section 199 as
7 opposed to --

8 COMMISSIONER PARSONS: Illegitimate. I'm
9 sorry.

10 CHAIRPERSON MITTEN: It's a defined term
11 apparently.

12 VICE CHAIRPERSON HOOD: Okay.

13 COMMISSIONER HANNAHAM: It's like Arena
14 Stage.

15 VICE CHAIRPERSON HOOD: Is a legitimate?

16 MS. STEINGASSER: It is. It distinguishes
17 it between not only the more colorful type of theater,
18 but also movie theaters. It defines a type of live
19 performance.

20 COMMISSIONER PARSONS: Live performance.

21 VICE CHAIRPERSON HOOD: Oh, okay. That's
22 it. Live performance. Okay. Thank you.

23 COMMISSIONER PARSONS: I'm concerned as to
24 how mass transit facility entered into this. I'm
25 reminded of an argument I had with -- never mind. I

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1 won't use names. Proposal for a mass transit facility
2 in the form of a bus garage on the waterfront some
3 years ago. What did you have in mind here? Because
4 certainly that's not the kind of use we're talking
5 about. Is it a vent shaft or a turnaround for a
6 trolley or trolley stop or interface with water taxis
7 or --

8 MS. STEINGASSER: Yes, yes, yes. We
9 borrowed this use straight from the other W zones, the
10 1, 2 and 3.

11 COMMISSIONER PARSONS: I'll be darned.
12 Well, this is a special exception, so we will --

13 CHAIRPERSON MITTEN: And it is conceivable
14 that there would be, under some circumstances, there
15 would be an argument that could be made that it would
16 further the objectives of the waterfront districts.

17 COMMISSIONER PARSONS: Yes.

18 CHAIRPERSON MITTEN: Okay. In GG, I would
19 just want to eliminate light wine and just have it be
20 wine since I don't know what light wine is. Is that
21 some Canadian thing, Mr. Lawson?

22 MR. LAWSON: There is no light alcohol in
23 Canada.

24 CHAIRPERSON MITTEN: Here again, we have,
25 in TT, we have the use of the word "temporary." So

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1 let's say we'll just put in "occasional."

2 Anything else? Anybody else want to
3 comment on any of the uses in the list in 917.1?

4 COMMISSIONER HANNAHAM: What are tobacco
5 products?

6 CHAIRPERSON MITTEN: What are tobacco
7 products?

8 COMMISSIONER HANNAHAM: I mean, what kind
9 of a site would that be? A tobacco shop?

10 CHAIRPERSON MITTEN: Oh, it's the sale of
11 tobacco products.

12 COMMISSIONER PARSONS: Do they have
13 tobacco shops anymore?

14 CHAIRPERSON MITTEN: They have cigar
15 stores and stuff.

16 COMMISSIONER PARSONS: Oh.

17 COMMISSIONER HANNAHAM: But we're really
18 trying to get away from promoting tobacco and its use
19 because it's an addictive product.

20 CHAIRPERSON MITTEN: Shall we take it out?

21 COMMISSIONER HANNAHAM: I would take it
22 out.

23 CHAIRPERSON MITTEN: Let's take it out.

24 COMMISSIONER HANNAHAM: I feel it
25 shouldn't be there.

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1 CHAIRPERSON MITTEN: Are we in agreement?

2 COMMISSIONER HANNAHAM: That doesn't stop
3 people from smoking in the open air, but why would you
4 want to promote tobacco usage as a public --

5 CHAIRPERSON MITTEN: I think that's a very
6 fine idea. I agree with that.

7 COMMISSIONER HANNAHAM: All right.

8 CHAIRPERSON MITTEN: They can go to W-1
9 and buy tobacco products.

10 VICE CHAIRPERSON HOOD: I mean, are we
11 being competitive? And I agree with Commissioner
12 Hannaham, but if you're on the waterfront, you're
13 close by the water, you want to have a cigar or
14 whatever, I'm not promoting it, but I'm saying we also
15 want to make sure we're competitive.

16 CHAIRPERSON MITTEN: It's not saying -- I
17 think the distinction is, like you can go into a food
18 store and they might sell cigarettes, but this would
19 be a store devoted solely to the sale of tobacco
20 products.

21 VICE CHAIRPERSON HOOD: And those stores
22 exist. They are around. And actually, I can
23 visualize one being on the waterfront close to the
24 water, and I just think we're limiting ourselves.

25 CHAIRPERSON MITTEN: What do you think,

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1 Mr. Parsons?

2 COMMISSIONER PARSONS: I'm looking for
3 tobacco products in the other W zones and I can't find
4 them.

5 VICE CHAIRPERSON HOOD: They are not as
6 close to the water.

7 COMMISSIONER PARSONS: So you have to sell
8 it on the waterfront where there's plenty of fresh
9 air.

10 VICE CHAIRPERSON HOOD: I'm not going to
11 make a big deal, Madam Chair. We can take it out.

12 CHAIRPERSON MITTEN: Okay. I find it
13 interesting that we should keep the sale of beer and
14 light wine and eliminate the sale of tobacco products,
15 but I'm all for it.

16 VICE CHAIRPERSON HOOD: Be consistent.

17 CHAIRPERSON MITTEN: Okay.

18 MR. BERGSTEIN: Madam Chair, this may not
19 be a question, more an observation, but back to
20 temporary fair, circus, carnival, I didn't catch this
21 when I was reviewing it, but there is a
22 matter-of-right use in the R zone for temporary use of
23 premises by fairs, circuses and carnivals on
24 compliance with the provisions of Chapter 13 of Title
25 19 DCMR, use of parks for recreation, which is a very

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1 specific provision that permits these types of uses
2 and it is permitted by DCRA.

3 I don't know if the intent was to not call
4 out that correlation, because there really is a
5 correlation in this particular case, and whether -- I
6 don't know if OP purposely left that out in terms of
7 the description of this use or not, or whether or not
8 you want us to investigate whether or not it would be
9 appropriate to keep in that reference to Title 13 --
10 Chapter 13.

11 CHAIRPERSON MITTEN: Let me just make sure
12 it's not in the same category as the item that we
13 eliminated in 900.7, which is, if you're going to have
14 a fair, circus or carnival, are you bound by Title 13,
15 whatever the provision is, regardless of whether we
16 call it out or not.

17 MR. BERGSTEIN: I guess that's my concern,
18 though, that if one part of the zoning regulations
19 call it out as if there was a precondition, not just
20 to satisfaction of the zoning regulations, but this
21 other thing, and this provision doesn't, someone might
22 try to make the argument that somehow they have been
23 absolved of complying with that provision.

24 CHAIRPERSON MITTEN: Okay.

25 MR. BERGSTEIN: So at least I would like

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1 to take a look at what that provision -- whether or
2 not there's a real necessary correlation between the
3 two, and then if there's not, I guess give you a
4 cleanup rulemaking to get rid of that cross-reference
5 so at least the two provisions say the same thing and
6 then change "temporary" there to "occasional" if
7 that's what you're going to do.

8 CHAIRPERSON MITTEN: Okay.

9 MR. BERGSTEIN: Okay.

10 CHAIRPERSON MITTEN: That sounds great.
11 Thank you.

12 Okay. Anybody else on the special
13 exception uses?

14 COMMISSIONER PARSONS: I'm lost here.
15 Where does it provide for -- I'm sorry. Moving along.

16 CHAIRPERSON MITTEN: Okay.

17 COMMISSIONER PARSONS: We can't get to
18 boathouse until we get to 918. That's why I was
19 wondering why boathouse isn't listed.

20 CHAIRPERSON MITTEN: It has special
21 provisions associated with it beyond 3104.

22 COMMISSIONER PARSONS: So you don't need
23 to list it in this list if it's contained in the
24 following sections?

25 CHAIRPERSON MITTEN: Right.

26

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1 E-V-E-N-I-N-G S-E-S-S-I-O-N

2 (6:00 p.m.)

3 COMMISSIONER PARSONS: Okay.

4 CHAIRPERSON MITTEN: The list is -- those
5 are the special exceptions that will be considered
6 either by the Board of Zoning Adjustment under the
7 normal test for a special exception or by us under
8 this new 926. But if you're another kind of special
9 exception, like a boathouse, marina or yacht club,
10 there's more, so it's in a separate section.

11 MR. BERGSTEIN: One way I was thinking
12 about this as I was reading it again is it's possible
13 to move up the specific special exceptions for
14 boathouse, marina, yacht club, so they follow the
15 other ones that are called out in W-0 and then move
16 these to sort of right afterwards as, "In addition,
17 the following special exceptions may be allowed," if
18 that makes anything clearer, because it does interrupt
19 the flow of it.

20 COMMISSIONER PARSONS: You're right.

21 CHAIRPERSON MITTEN: Okay.

22 COMMISSIONER PARSONS: But it after
23 colleges and universities, you mean?

24 MR. BERGSTEIN: Yes, that's right.

25 CHAIRPERSON MITTEN: Okay. Oh, yes. That

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1 sounds good. Okay.

2 VICE CHAIRPERSON HOOD: But also, Madam
3 Chair, can we deal with this language here at 918.1?
4 I know we're moving it, but can we deal with it? It
5 says if the Board of Zoning Adjustment or the Zoning
6 Commission considers that it is appropriate -- who
7 makes that decision?

8 CHAIRPERSON MITTEN: The decision will be,
9 if we go -- under 926, what is being proposed is, when
10 someone comes, and the property is not zoned W-0 at
11 that point, so it's either unzoned or zoned something
12 else, and they are coming to the Zoning Commission,
13 they can at that point -- it's sort of in the spirit
14 of one-stop shopping -- they can seek their special
15 exception approvals from the Zoning Commission.
16 Otherwise, they go before the BZA.

17 VICE CHAIRPERSON HOOD: Okay. Where does
18 that tell me? I see where the Zoning Commission's
19 piece is, but where does that tell me exactly what you
20 just said?

21 CHAIRPERSON MITTEN: I believe it's in
22 926.1. As part of its consideration of a petition or
23 application to zone a property or properties to the
24 W-0 District, the Zoning Commission may review special
25 exception and variance requests simultaneously with

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1 the zoning map amendment application.

2 VICE CHAIRPERSON HOOD: Okay. It's almost
3 like it's just telling me half the story.

4 CHAIRPERSON MITTEN: I think there is an
5 implication.

6 VICE CHAIRPERSON HOOD: And that's my
7 point, there's an implication, but if I'm not a -- I
8 know we don't write regulations for those who are
9 laymen, I don't guess, but we should try to make it as
10 simple as possible. This is actually not telling me
11 exactly where I need to go unless we want something
12 zoned W-0.

13 CHAIRPERSON MITTEN: Okay.

14 VICE CHAIRPERSON HOOD: After that -- it's
15 only like giving me half the story.

16 CHAIRPERSON MITTEN: Okay.

17 COMMISSIONER PARSONS: Then we should be
18 moving that ahead of this story. In other words, you
19 ought to know that before you read this.

20 VICE CHAIRPERSON HOOD: Before you get
21 there.

22 COMMISSIONER PARSONS: Yes.

23 VICE CHAIRPERSON HOOD: And that's kind of
24 where I'm going. But I don't have any language.

25 COMMISSIONER PARSONS: You need to move

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1 Section 926 possibly.

2 CHAIRPERSON MITTEN: Okay.

3 Mr. Bergstein?

4 MR. BERGSTEIN: Yes. What I tried to do
5 was not interrupt the flow of special exceptions from
6 W-1, 2 and 3 to W-0, but as I keep on hearing these
7 comments, perhaps what we can do is have an
8 introductory section in essence that says that, "The
9 following special exceptions are applicable to W-0 and
10 where proposed as a map amendment," in other words
11 explain it as an introductory section to the special
12 exception provisions.

13 CHAIRPERSON MITTEN: Yes.

14 VICE CHAIRPERSON HOOD: I would agree, Mr.
15 Bergstein, because there is another regulation in the
16 ordinance that does that, and I think that that would
17 be very helpful.

18 CHAIRPERSON MITTEN: Okay. That would be
19 great. So you will work on reorganizing this, Mr.
20 Bergstein?

21 MR. BERGSTEIN: Yes.

22 CHAIRPERSON MITTEN: Okay.

23 If we're ready to move to 918, then, where
24 it says, at the end of 918.1, that you can get a
25 special exception for a boathouse either from the

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1 Board of Zoning Adjustment or from the Commission, and
2 then it says, "subject to the provisions of this
3 section and the provisions of Sections 930 to 937"
4 that relate to lot occupancy and height and so forth.

5 We don't always say that, and I thought it
6 went without saying that you had to comply with all
7 the other provisions related to density and height and
8 so forth, so again to your point about this additional
9 language related to carnivals and stuff, if we don't
10 say it in other places, does it imply that you're not
11 bound to the other sections?

12 MR. BERGSTEIN: That's always a problem,
13 and the question here is whether or not the type of
14 exceptions that you're making here would put it in
15 anyone's mind that perhaps the other sections don't
16 apply. So you're weighing, you know, the potential
17 evils on either side.

18 CHAIRPERSON MITTEN: But it's a use -- the
19 special exception is for the use, right? And then the
20 other things don't relate to use; they relate to
21 physical aspects.

22 MR. BERGSTEIN: I would have no problem
23 with taking that language out.

24 CHAIRPERSON MITTEN: Okay.

25 MR. BERGSTEIN: Unless OP has a concern

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1 that I'm not aware of.

2 CHAIRPERSON MITTEN: Do you guys have any
3 concerns? Mr. Lawson or Ms. --

4 MR. LAWSON: I'm sorry?

5 CHAIRPERSON MITTEN: Do you have any
6 concerns about us deleting the language at the end of
7 918.1 that says, "and the provisions of Sections 930
8 to 937"?

9 MR. LAWSON: I have no objections to that.
10 That language is repeated in a number of different
11 sections. It would come out in all of --

12 CHAIRPERSON MITTEN: Right. Yes. But we
13 don't always say that in all the other places and
14 throughout the ordinance where we talk about stuff
15 like that. Okay.

16 918.2. Now, we're talking about
17 boathouses, and I'm just wondering, the term
18 "facility" is used as opposed to "structure," and I
19 didn't know if there is some distinction there and if
20 there is anything lost by saying "facility" versus
21 "structure."

22 MR. LAWSON: The intent was actually to
23 gain. The "structure" -- I was concerned that the
24 "structure" would be interpreted as applying to the
25 principal building alone. The facility would relate

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1 to the structure, any associated decks and piers,
2 boat-hoisting equipment, you know, whatever might be
3 associated with the use in addition to the building
4 itself.

5 CHAIRPERSON MITTEN: Okay.

6 Mr. Bergstein, I'm going to ask you just
7 to, between now and final action, just to think about
8 that, because "facility" is not a defined term and
9 just to make sure that we're not -- perhaps we should
10 be defining "facility," although --

11 COMMISSIONER PARSONS: We could just say
12 "boathouse and accessory structures."

13 MR. BERGSTEIN: I was thinking of
14 "boathouse and associated facilities" if that's really
15 what Mr. Lawson is getting at.

16 CHAIRPERSON MITTEN: Okay.

17 MR. BERGSTEIN: In other words, if
18 boathouse means more than the boathouse and includes
19 associated facilities within the scope of the special
20 exception, would it be useful to call it out there,
21 say that "boathouse and associated facilities," and
22 then maybe just repeat it each time rather than saying
23 "facility."

24 CHAIRPERSON MITTEN: Okay.

25 MR. BERGSTEIN: Or put a paren around it

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1 to say "facility," In other words, say "the boathouse
2 and associated facility (facility)," and then the word
3 "facility" would relate back to that.

4 CHAIRPERSON MITTEN: Okay. Just making a
5 note. I think the term "facility" is used elsewhere,
6 too, so we could just maybe look for that.

7 COMMISSIONER PARSONS: On (b), this
8 hesitancy to excavate I'm not quite sure I understand.
9 Is it the concern that these might be wetlands, or
10 what is it?

11 MR. LAWSON: The concern here is that
12 we're getting at boathouses that impact the shoreline
13 as little as possible. I wouldn't anticipate a
14 boathouse going into an official wetlands, quite
15 honestly. I think from an environmental standpoint,
16 an ecological standpoint, that wouldn't be in line
17 with other regulations and requirements. But we would
18 still like to see them minimize the amount of
19 disturbance. The regulation does not say, "You shall
20 not disturb"; it's guidance that we're looking for a
21 minimum amount of disturbance.

22 COMMISSIONER PARSONS: Okay.

23 CHAIRPERSON MITTEN: On 918.4, it
24 specifically says that a boathouse may include
25 restrooms, showers, so on and so forth, and that only

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1 relates to W-0, and it doesn't say that a boathouse
2 may include those things when we talk about it in the
3 other zones, uses as a matter of right, 901.1. So I
4 didn't know if that was what was intended or if --

5 MR. LAWSON: I think you're absolutely
6 right. I think that either the regulation will need
7 to be changed to include all of those accessories as
8 in the earlier ones, or possibly at one point that
9 whole clause was in the definitions section.

10 CHAIRPERSON MITTEN: Right.

11 MR. LAWSON: I thought it made sense to
12 move it to this section. But we will have to either
13 cross-reference or move it back to the definitions
14 section.

15 CHAIRPERSON MITTEN: Okay. I have the
16 same comment -- are we done with 918? Anybody else on
17 918?

18 COMMISSIONER PARSONS: All right.

19 CHAIRPERSON MITTEN: Okay. On 919, I had
20 the same comments, in 919.1 about the end of the
21 section, so we can take that out.

22 I did have a question in the section about
23 floating homes, 919.4(b) where it says, "No floating
24 home may be used exclusively for any form of
25 commercial use." It suggests it might be in part, and

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1 I guess I'm wondering what you're thinking of there.

2 MR. LAWSON: I guess we used the -- well,
3 we used the word "exclusively" to note that the
4 following clause, you know, says that home occupation
5 is allowed, which is a form of business that would be
6 allowed. But exclusively is a form of commercial use
7 exclusively for -- I don't know -- whatever commercial
8 use that might be, for a restaurant, that kind of
9 thing, would not be permitted.

10 CHAIRPERSON MITTEN: But isn't it the
11 definition of -- let's see. The definition of
12 floating home is it's going to be a residence. Yes?
13 Or maybe not necessarily. As a water-born residential
14 dwelling. And then when we go and we make reference
15 to the home occupation section, that limits the amount
16 of, you know, non-residential use. So I guess I'd
17 just as soon delete (b) because it suggests something
18 that I don't want to be suggesting. Is that okay?

19 MR. LAWSON: Yes. I understand what
20 you're saying, and I think that's a good idea.

21 CHAIRPERSON MITTEN: Okay.

22 Anybody else on 919 marina?

23 (No response.)

24 CHAIRPERSON MITTEN: 920, yacht club.

25 Same comments for 920.1. 920.2(a), the term "moorage

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1 spaces" is used and we had been using "berth," and I
2 don't know -- I was in the Navy for two years and I
3 don't know the difference. Is there a difference?

4 MR. LAWSON: I don't know of any
5 difference, but I think it's wise to use one term
6 rather than two different terms for the same things.

7 CHAIRPERSON MITTEN: Okay. Then I'm
8 advocating "berth" since that seems to be more
9 frequently used.

10 Anybody else on 920?

11 COMMISSIONER PARSONS: Well, we might want
12 to check that.

13 CHAIRPERSON MITTEN: Check it? Okay.

14 COMMISSIONER PARSONS: In other words, the
15 Capital Yacht Club came to us and they said that they
16 had a responsibility to house or host visiting yachts.

17 CHAIRPERSON MITTEN: Right.

18 COMMISSIONER PARSONS: So those are tied
19 at the end of the pier at the Capital Yacht Club.
20 Forbes is in today, for instance.

21 CHAIRPERSON MITTEN: Right.

22 COMMISSIONER PARSONS: Is that moorage
23 when you're at a dock and a berth is something
24 different with a dock at both ends, on both sides? Do
25 you know what I mean? Mooring to me is an anchor.

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1 CHAIRPERSON MITTEN: Why don't we ask Mr.
2 Lawson to --

3 COMMISSIONER PARSONS: Yes, I think we
4 better check that before we --

5 CHAIRPERSON MITTEN: -- provide us with a
6 series of definitions of these terms so that we will
7 be using the right ones and we won't be missing
8 something that we want to include.

9 COMMISSIONER PARSONS: And solicit a
10 comment as a result.

11 CHAIRPERSON MITTEN: Yes. And to that
12 list, you can add the word "clubhouse." Everybody
13 uses it, but, you know, if somebody had to say, "Oh,
14 that's definitely the clubhouse. That's definitely
15 not the clubhouse," I'm not sure that -- I'm thinking
16 when we get into measurements as it relates to the
17 caretaker's residence in the next section. I wanted
18 to know, I guess, because I had home occupation on my
19 mind when I was just coming out of the previous
20 section, and when we get to caretaker's residence, are
21 we intending that a home occupation would be permitted
22 in the caretaker's residence?

23 MR. LAWSON: It wasn't my intention.

24 CHAIRPERSON MITTEN: Okay. That's fine
25 with me. I just wanted -- I think we should say that.

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1 Okay. Anybody else on caretaker's
2 residence?

3 (No response.)

4 CHAIRPERSON MITTEN: How about parking
5 spaces W-0. I think -- did everybody get the revision
6 that Mr. Bergstein had suggested?

7 COMMISSIONER PARSONS: No.

8 CHAIRPERSON MITTEN: We need some
9 additional copies of that.

10 I think this again is just trying to add
11 some clarity to the language, the changes. Am I
12 right, Mr. Bergstein?

13 MR. BERGSTEIN: Yes. And the one where I
14 left out in what would be Subsection A is, after the
15 word "economically," the word "practicable" should be
16 in there.

17 But yes, it was an attempt to first define
18 what the test is separately from the elements that
19 actually allow an applicant to prove the test, and
20 arguably it's not even necessary to state the test,
21 but only these criteria if these are the only criteria
22 that are to be used. But I think this test has been
23 used elsewhere in the zoning regulations, so I think
24 it's fine to keep it.

25 CHAIRPERSON MITTEN: Okay. And one of the

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1 things that I wanted to ask the Office of Planning to
2 think about for us is we talk about the opportunity to
3 locate the parking spaces elsewhere and so forth, but
4 we have these requirements in Chapter 21 about what
5 constitutes a parking space that can be -- a surface
6 parking space that can be counted for the required
7 parking, and I wanted to ask you to give some thought
8 to whether or not we could have some provision in here
9 that would allow that surface to not be an impervious
10 surface since we want to encourage people, you know,
11 to be more creative close to the water, and then we
12 might want to expand that to maybe the other W zones,
13 but for now we'll just deal with it here.

14 VICE CHAIRPERSON HOOD: Madam Chair, let
15 me just ask, do we have a setback -- and if we do, I
16 may have missed -- a setback for parking spaces -- for
17 a lot, parking lot? Most waterfronts, I believe the
18 parking lots are set back a certain amount of feet.

19 CHAIRPERSON MITTEN: Well, we do have the
20 setback provisions that we haven't gotten to.

21 VICE CHAIRPERSON HOOD: But I mean
22 specifically for -- well, maybe I can wait.

23 CHAIRPERSON MITTEN: No, that's a good
24 question.

25 VICE CHAIRPERSON HOOD: Maybe I'll wait

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1 until we get there.

2 CHAIRPERSON MITTEN: Okay.

3 VICE CHAIRPERSON HOOD: Maybe that's the
4 appropriate time. Hopefully I won't forget.

5 CHAIRPERSON MITTEN: Okay. But your point
6 is a good point, because when we get to that, and
7 we'll just remind ourselves with a little note here,
8 it says that the setback will apply to any building or
9 structure, and I don't think a surface parking lot,
10 even though that's not -- that's going to be an
11 accessory use, the setback would not apply. Am I
12 right about that? Is that your understanding?

13 MR. LAWSON: Yes, that's my understanding.

14 CHAIRPERSON MITTEN: Okay. So we will
15 have to talk about that.

16 VICE CHAIRPERSON HOOD: Do we need to deal
17 with it now or later?

18 CHAIRPERSON MITTEN: Let's talk about it
19 when we get to the setback.

20 VICE CHAIRPERSON HOOD: Okay.

21 CHAIRPERSON MITTEN: Okay. What is strip
22 zoning? I understand what shallow zoning depth is,
23 but strip zoning, I was wondering what that was.

24 MS. STEINGASSER: This is a reference used
25 from Chapter 22, the regular parking restrictions.

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1 It's my understanding that it means a small narrow
2 strip of zoning that you often see along street
3 fronts, may be defined as being only 50 feet back from
4 a right of way, just a small strip of zoning.

5 CHAIRPERSON MITTEN: I see. Okay.

6 Okay. Anybody have questions about 922?
7 Any other questions?

8 (No response.)

9 CHAIRPERSON MITTEN: Another term that I
10 was hoping you would define for us, just how will it
11 be defined if we use our normal means, is what's
12 runoff? I mean, I know what you mean, but if we don't
13 define from, how is it going to end up being
14 interpreted for us?

15 In 922.2, it says, "All or a portion of
16 required parking spaces can be reduced or eliminated
17 for these reasons." One is (b), "The type or location
18 of the facility results in diminished demand for
19 parking," but it doesn't say relative to what. Did
20 you have something in mind there, or do you want to
21 respond to that later?

22 MR. LAWSON: Sorry. I'm not sure I
23 understand the question. Is this a question about the
24 word "facility"?

25 CHAIRPERSON MITTEN: No.

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1 MR. LAWSON: Sorry.

2 CHAIRPERSON MITTEN: It says that,
3 according to this section, you can be relieved of your
4 requirement for all or a portion of your parking
5 spaces if the type or location of facility results in
6 diminished demand for parking, and I'm saying the
7 diminished demand is relative to what? Do you follow
8 me? Because it has to be -- you know, you're saying,
9 "Oh, this is going to result in less demand," but it's
10 less demand than what?

11 MR. LAWSON: I guess less demand than what
12 would normally be required for one of these, and I
13 guess an example would be a boathouse that's
14 associated with an existing -- with an existing
15 facility that already provides parking, such as a
16 university.

17 CHAIRPERSON MITTEN: Okay.

18 MR. LAWSON: So that would be a facility,
19 a related facility as well as a location; in other
20 words, it's anticipated that most users would be able
21 to reasonably walk to the facility rather than drive
22 to it, which gets to location.

23 CHAIRPERSON MITTEN: Okay. You're
24 thinking ahead, I think, to a specific case. So it
25 results in a diminished demand for parking than would

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1 otherwise be expected for a facility of that type?

2 MR. LAWSON: Or anticipated by --
3 otherwise anticipated by the zoning.

4 CHAIRPERSON MITTEN: Okay. I know between
5 you and Mr. Bergstein, we're going to get something in
6 there.

7 Okay. Anybody else in 922?

8 COMMISSIONER PARSONS: 922.2(a). I guess
9 existing is -- I was thinking of adjacent parkland.
10 "Existing" sounds like the wrong modifier for that, as
11 though maybe it won't be existing in the future or
12 something.

13 CHAIRPERSON MITTEN: Okay. Adjacent.

14 COMMISSIONER PARSONS: Adjacent.

15 CHAIRPERSON MITTEN: Okay. Anything else
16 in 922?

17 (No response.)

18 CHAIRPERSON MITTEN: Okay, 923, special
19 exception review criteria.

20 COMMISSIONER PARSONS: I have had trouble
21 -- I was going to ask this during the hearing, but
22 923.3 seems to -- it says "should be located entirely
23 on the shore directly in front of the moorage berths."

24 Why does it -- what does "directly" mean? If you had
25 five piers going down to the water with mooring

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1 berths, do you simply mean it has to be somewhere
2 within the footprint of those five and not down the
3 block?

4 MR. LAWSON: That's the general intent,
5 yes.

6 COMMISSIONER PARSONS: But it shouldn't
7 spread across all of those moorage berths, piers.

8 CHAIRPERSON MITTEN: How about "shall be
9 located entire on shore adjacent to the moorage
10 berths," and there we have "moorage" and "berth" in
11 the same thing. How about "adjacent to"?

12 COMMISSIONER PARSONS: Well, that implies
13 the neighbor's property. So I guess "directly" is
14 okay.

15 CHAIRPERSON MITTEN: Okay. A lot of those
16 in 923, it's got to say "shall," but I've got some
17 editorial stuff to suggest, too.

18 Anybody else on 923?

19 COMMISSIONER PARSONS: 923.5. Oh, I'm
20 sorry. I'm okay. I made a note and then -- sorry
21 about that.

22 CHAIRPERSON MITTEN: Okay. 924, special
23 exception application requirements.

24 MR. BERGSTEIN: Could I just go back to
25 923 and explain the "will" as opposed to the "shall"?

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1 Because that was my choice. These are the criteria
2 that the applicant must prove, so the use of the word
3 "shall" I didn't believe was appropriate because
4 "shall" connotes something that absolutely has to be
5 complied with in terms of how you would construct
6 something rather than these are actually what the
7 applicant must prove. That's why the lead-in language
8 says that the applicant has the burden of proof that
9 these standards are met. So the applicant must prove
10 that the buildings and structures and land -- uses on
11 land will be located, they can't prove they shall be
12 located.

13 CHAIRPERSON MITTEN: Okay.

14 MR. BERGSTEIN: So that's why the "shall"
15 was turned to "will."

16 CHAIRPERSON MITTEN: Okay. Always nice to
17 learn something new about the appropriate use of the
18 English language.

19 Okay. 924, special exception application
20 requirements. In 924.1(c), and I notice that you
21 picked some of these up from the recommendations of
22 the Natural Resources Defense Council, in (c), instead
23 of "most common species," they used "most abundant
24 species," which I think is actually better because
25 common is like the dandelions and stuff, and maybe

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1 that's not really what we're going for, you know?

2 COMMISSIONER PARSONS: Now, what you mean
3 here, as I understand it, is a survey plan which just
4 shows the outline of existing vegetation as opposed to
5 what we do in the tree and slope overlay, where they
6 come in and measure all the trees. I mean, it's just
7 to show the bulk of masses of planting?

8 MR. LAWSON: That was the intent, yes.

9 COMMISSIONER PARSONS: I think that's
10 reasonable. Okay. And "abundant" I think is good.

11 I'm concerned about (f) and (g) if we
12 could go to 24.2. Two things concern me here, one
13 that this is almost putting the Zoning Commission or
14 the BZA into an area of expertise they don't have. I
15 said almost. They don't have this. And the second
16 thing is why at this level of mapping do we need the
17 capacity of existing utilities and water connections
18 and all these details?

19 I mean, this is really a mapping case with
20 a PUD-like application, but this goes beyond what we
21 asked for most PUD applicants. Admittedly, this is a
22 shoreline of the river and very sensitive area, but I
23 don't understand the need for all of this. And they
24 said?

25 MR. LAWSON: We conferred and then we said

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-- part of the -- or much of the requirement here, one of the main reasons we put this in is we wanted to make sure that the information was kind of amassed by the applicant and supplied to the Commission or to the BZA for referral to the appropriate agencies so that Department of Health or depending on the specifics, or DDOT or OP or whoever, would have the information they would need to give the Zoning Commission or the BZA a very preliminary look at whether or not what they are proposing would have significant harmful impacts.

We certainly had many debates amongst ourselves with Corp Counsel on the level of information that was appropriate to be asked for, though, so I understand the question.

COMMISSIONER PARSONS: Well, I think this is a strange precedent to be setting. I mean, why wouldn't we begin to require this of applicants for other purposes or PUDs, for example?

CHAIRPERSON MITTEN: I think your concern is a good one because once you start asking for information, it implies that you want the BZA or the Zoning Commission to do something with the information, and if it's not our role to use the information, then it's the agency or whatever who's doing a review farther down the line that should be

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1 asking for it and not giving the impression that the
2 Zoning Commission or BZA is going to do something
3 about it.

4 So are you advocating the deletion of (f)
5 and (g), then, Mr. Parsons?

6 COMMISSIONER PARSONS: I guess I was
7 trying to be less specific about it. I mean --

8 MR. LAWSON: Just as a suggestion, because
9 we have had these debates amongst ourselves and I
10 certainly understand where you're coming from with
11 this issue, perhaps, for example, in (f), if we simply
12 ask for the location of such facilities, which I think
13 is germane to the overall layout and character of a
14 development, and not necessarily ask for the specifics
15 of the capacity and the design, maybe that would
16 address some of Commissioner Parson's concerns.

17 CHAIRPERSON MITTEN: Some of the
18 information is already asked for in (a). For
19 instance, in 924.2(a), you ask about the utilities;
20 that's in (a). And then it went further in (f). In
21 (g), you ask about storm water management; that's also
22 in (a). So, you know, it seemed like some of those
23 things were just being fleshed out in greater detail
24 in (f) and (g); it's not that they are completely not
25 addressed elsewhere.

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1 MS. STEINGASSER: I was going to suggest
2 if the specificity of the two subsections makes the
3 Commission uncomfortable, our intent was to try to
4 flesh out some preliminary information so that the
5 referral agencies could give an informed
6 recommendation or an informed response to the BZA or
7 the Commission.

8 Perhaps we could state something more
9 generic like "other information as may be requested by
10 referral agencies," and then it would be left more to
11 the referral agencies to ask for what they need to
12 provide the Commission with a response rather than
13 requiring it within the zoning text.

14 CHAIRPERSON MITTEN: I think that would be
15 fine except that I think we need to say, and maybe we
16 should -- we can either say it there or we can say it
17 in 925.1, which is I think we have to -- we have to
18 define what expectation we have particularly of the
19 Department of Health in making a recommendation at
20 this stage, because we're saying specifically this
21 doesn't substitute for another review down the line.
22 So what kind of review do we really expect? How are
23 we expecting them to weigh in in a meaningful way for
24 the Zoning Commission or the BZA, so that they know
25 very clearly, "Okay, this is what is expected of me at

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1 this point. I know it's expected of me at the
2 environmental impact assessment point" or whatever.
3 And then that way, they will know what kinds of
4 information they might want to see at this stage so
5 that what language you have proposed would then be
6 meaningful. Do you follow me? Otherwise, they're
7 just going to say, "Well, show me everything you
8 always show me and then I'll" -- you know.

9 How does that sound, Mr. Parsons?

10 COMMISSIONER PARSONS: What specifically
11 would you do, then?

12 COMMISSIONER PARSONS: Well, I don't have
13 anything to suggest at the moment, but what I'm
14 suggesting is that Office of Planning help us
15 determine what exactly is it that we are expecting
16 particularly from the Department of Health at this
17 juncture when the application is before the Board or
18 the Commission as distinct from farther down the line
19 when they do their environmental --

20 COMMISSIONER PARSONS: Well, (f) and (g)
21 to me are building permit requirements; they are not
22 zoning requirements.

23 CHAIRPERSON MITTEN: Okay.

24 COMMISSIONER PARSONS: Period. So I would
25 take them out and leave (a), which is the kind of

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1 thing we should be looking at.

2 CHAIRPERSON MITTEN: Okay. Let's do that.

3 For the time being, we will take them out, and then
4 if you have something to propose by way of additional
5 language, we will consider that in final action. We
6 will also ask you to supplement 925.1 in some way so
7 that it's clear what's expected at this juncture.

8 VICE CHAIRPERSON HOOD: Madam Chair, we're
9 on 925.1. I guess I want to know why that's there at
10 that point, at that juncture. I understand the
11 referral, but I would think that the referral to the
12 agencies would have happened long before final action.

13 I'm just not clear of anything any different than
14 what we're already doing.

15 MR. BERGSTEIN: It is template language
16 and I understand what you are saying, Mr. Hood. You
17 would normally expect it to say before the
18 commencement of a hearing. But we did use the normal
19 language that's used for referrals, but we can
20 certainly tweak it to say before the commencement of
21 the hearing. That would be the alternative.

22 VICE CHAIRPERSON HOOD: For example, Mr.
23 Bergstein, if the Board of Zoning Adjustment -- I see
24 how it can apply. If the Board of Zoning Adjustment
25 wants to do a bench decision, then that would stop

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1 them from doing that before they get this other
2 information. That's just the way I looked at how we
3 were trying to get to it. But on the Zoning
4 Commission's standpoint, the way we deal with it, like
5 we said earlier, it happens before we the to this
6 juncture, I think, and I would hope it would happen
7 long before. Then we would have input, especially of
8 the Office of Planning and other agencies, early on,
9 with maybe some supplementals later.

10 CHAIRPERSON MITTEN: And I think that's
11 why the Office of Planning needs to define what we
12 want at this stage, because as Mr. Parsons was
13 pointing out, you know, these -- we get to increasing
14 levels of detail, and when they are before the Board
15 or the Commission, they don't have the same level of
16 detail as they do when they are ready to go for a
17 building permit, and that's when some of these other
18 reviews take place.

19 So what is it that we want early in the
20 process from them as distinct from the later review
21 that they will clearly have when they are at the
22 building permit stage and so forth?

23 VICE CHAIRPERSON HOOD: I wonder if we can
24 even legislate that because I believe each case will
25 be different. I'm looking here at what we just did

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1 with (f) and (g) where I'm in agreement. Then I come
2 down to 925.2, and it seems like we're all back into
3 it again. But it more or less I believe explains what
4 Commissioner Parsons was speaking of about being so
5 specific in (f) and (g).

6 I guess this question I would ask
7 Commissioner Parsons: Is he satisfied 925.2? If
8 that's in order, Madam Chair.

9 COMMISSIONER PARSONS: Yes. I'm waiting
10 for the Chair to rephrase your question so I can
11 answer it.

12 VICE CHAIRPERSON HOOD: You didn't
13 understand my question?

14 COMMISSIONER PARSONS: Yes.

15 VICE CHAIRPERSON HOOD: Okay.

16 CHAIRPERSON MITTEN: And I think he said
17 yes.

18 VICE CHAIRPERSON HOOD: Oh. Okay. So you
19 don't have a problem with that.

20 COMMISSIONER PARSONS: With 95.2?

21 VICE CHAIRPERSON HOOD: 925.2.

22 CHAIRPERSON MITTEN: 925.2.

23 COMMISSIONER PARSONS: Uh-huh.

24 VICE CHAIRPERSON HOOD: Okay.

25 CHAIRPERSON MITTEN: What I would like to

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1 propose that we do now is that we adjourn this special
2 public meeting, take a five-minute break so we can
3 start our hearing on time -- I don't anticipate that
4 the hearing is going to take a lot of time this
5 evening -- and then reconvene the special public
6 meeting so that we can wrap up the rest of our
7 discussion. Is that amenable to the Commission?

8 COMMISSIONER PARSONS: That's a wise thing
9 to do.

10 CHAIRPERSON MITTEN: All right. Then we
11 will for the moment adjourn the special public meeting
12 of April 28th.

13 (Whereupon, at 6:36 p.m., the special
14 public meeting recessed and reconvened at 7:14 p.m.)

15 CHAIRPERSON MITTEN: All right. I think
16 we left off and we were in Section 925, and we were
17 asking the Office of Planning to help define what type
18 of input we would be seeking from the Department of
19 Health at this juncture, and as well as
20 Transportation, as opposed to something that would
21 take place farther down in the building-permitting
22 process. So are there any other comments about
23 Section 925 before we move on?

24 (No response.)

25 CHAIRPERSON MITTEN: Okay. Well, then,

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1 let's go to 926, which is going to be reordered to
2 help this chapter be easier to understand, but let's
3 deal with it where it is at the moment.

4 COMMISSIONER PARSONS: I wanted to --
5 referring to the memo that Arnold & Porter, Mr. Gross,
6 wrote to us on April 4th, he is proposing flexibility,
7 and where I'm not sure we want to give flexibility in
8 the broad scope that he has, I would ask consideration
9 of a lesser circumstance, which is the circumstance in
10 which the Federal Government, especially the Park
11 Service, would make land available to a private
12 organization to build a boathouse and would want to
13 restrict the land given to erect that boathouse, that
14 if we use the sideyard requirements, the FAR
15 requirements, the general requirements that are
16 provided in these regulations, too much parkland would
17 have to be taken for the project. I don't mean that
18 in every circumstance, but certainly foreseeable.

19 So I would suggest a modification to that,
20 and I will read it to you. This is my suggestion:
21 The Commission shall have the option to approve a
22 lesser dimension or amount compared to the normal
23 requirement if the property is surrounded by National
24 Park Service land.

25 That may be a quick first draft, but it

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1 gets to my point. And that would be inserted in here
2 as a (c) under 926.2(a) and (b) there.

3 CHAIRPERSON MITTEN: Okay. So we would be
4 preserving some modest degree of flexibility in all
5 circumstances and then we had this greater degree of
6 flexibility if there is surrounding parkland.

7 COMMISSIONER PARSONS: Correct.

8 CHAIRPERSON MITTEN: Okay. That sounds
9 fine to me.

10 VICE CHAIRPERSON HOOD: Are we doing away
11 with (a) and (b)?

12 COMMISSIONER PARSONS: No.

13 CHAIRPERSON MITTEN: No.

14 VICE CHAIRPERSON HOOD: Oh.

15 CHAIRPERSON MITTEN: This is going to be a
16 (c).

17 VICE CHAIRPERSON HOOD: (c)? Okay. I
18 agree.

19 CHAIRPERSON MITTEN: One thing that -- I
20 agree with that and now I want to ask another
21 question, which is in 926.2, the standard, I think, is
22 the same standard that we use in planned unit
23 developments, and the language being the flexibility
24 has to be essential to the successful functioning of
25 the project, and that standard, to my mind, has never

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1 been met. So I guess I wonder if -- it's a very high
2 standard if it's implemented, but people with some
3 degree of regularity have just, you know, asked for it
4 and gotten it without ever meeting that standard. So
5 I guess what I would like to know is how serious are
6 we about the flexibility. Is this really something
7 that has to be essential, or is this like, well, if
8 you make a good argument, we'll give it to you, in
9 which case saying that something is essential to the
10 successful functioning of the project really implies a
11 higher standard than we might intend to apply.

12 Anybody have any thoughts about that?

13 VICE CHAIRPERSON HOOD: Normally we
14 usually use that clause "good cause"? I don't know if
15 this would be applicable to what you're talking about.

16 Actually, I was thinking we would go down that road
17 and I don't like going down that road because we --
18 sometimes you don't know where the standard is, how
19 high you want to make the standard. So it seems that
20 "good cause" has always worked in the past. Well,
21 supposedly has worked in the past.

22 CHAIRPERSON MITTEN: I don't know if this
23 is the right circumstance to use "good cause." Let me
24 just ask Mr. Bergstein to weigh in. I mean, it seems
25 like we use "good cause" when we say to somebody,

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1 "Well, if you come to us for an extension of a
2 deadline" or something, that that's good cause, not
3 sort of circumstances, you know, design-related
4 things. But it may be a proper standard. I don't
5 know.

6 MR. BERGSTEIN: Well, actually, I was
7 going to -- I think you're right. I think "good
8 cause" implies where there are extenuating
9 circumstances. It's an excuse: I would have done
10 this but for" rather than, you know, "I either need
11 this because I'm deserving of this because this will
12 enhance the project," or "I need this because I can't
13 do it without this," or some -- I think that's the
14 spectrum and you have to decide where on that spectrum
15 you want to put this.

16 COMMISSIONER PARSONS: How about if we
17 went the other direction and said that if application
18 of the conditions -- I mean of the regulations would
19 result in a dysfunctional project. In other words,
20 they've got to prove that our regulations would result
21 in a dysfunctional project instead of successful
22 functioning of the project.

23 CHAIRPERSON MITTEN: I like that. I like
24 that --

25 COMMISSIONER PARSONS: I don't know what I

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1 mean by dysfunctional, but you've got to prove
2 something --

3 CHAIRPERSON MITTEN: Yes. I mean I like
4 the direction that you're going in, because then it
5 means that they have to, as sort of a baseline, they
6 have to show what conformity looks like and why that
7 doesn't work.

8 COMMISSIONER PARSONS: Right.

9 CHAIRPERSON MITTEN: Yes, I like that.
10 Let's see. How about "May authorize the following if
11 --

12 COMMISSIONER PARSONS: "The strict
13 application of the regulations result in a
14 dysfunctional project."

15 CHAIRPERSON MITTEN: Rather than say
16 "dysfunctional," how about -- I would want to go so
17 far as to say "infeasible."

18 COMMISSIONER PARSONS: All right. Okay.

19 CHAIRPERSON MITTEN: That's a high
20 standard.

21 COMMISSIONER PARSONS: Yes.

22 CHAIRPERSON MITTEN: Okay. And then we
23 can dress up the rest of that language there. Okay.
24 Anyone else on 926?

25 (No response.)

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1 CHAIRPERSON MITTEN: Okay. 930.

2 VICE CHAIRPERSON HOOD: I'm concerned
3 about the height. We're trying to be -- I believe
4 we're trying to be more restrictive in the W-0.

5 CHAIRPERSON MITTEN: Yes.

6 VICE CHAIRPERSON HOOD: And we're doing
7 the same thing that we do in the W-1. I'm just
8 throwing this out here for discussion. I was thinking
9 more like it should be 30 feet, because you want to be
10 able to see the water, at least to some point, so I
11 think the closer we get to the water, and I may be
12 totally off left field, but I would think the closer
13 you get, we should come down in height, and I just
14 don't see us having the same height in a more
15 restrictive zone. That's just my view on that.

16 CHAIRPERSON MITTEN: I see your point and
17 I'm not disagreeing with your point; I just want to
18 add something to the discussion, which is W-0 is
19 mapped or potentially going to be mapped on waterfront
20 parcels. W-1 is mapped on waterfront parcels. W-2 is
21 mapped on waterfront parcels. W-3 is presently mapped
22 on waterfront parcels. So it's not like W-0 is going
23 to be on the waterfront and these other things are
24 going to be behind it, away from the water. We do
25 have some relatively -- the potential for some

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1 relatively tall buildings actually on waterfronting
2 parcels. But I take your point that, you know, we're
3 -- typically we combine reduced density and reduced
4 height.

5 VICE CHAIRPERSON HOOD: But I still think,
6 though, and while I understand W-1 may be just as
7 close as W-0, I still think, though, I would like to
8 see us -- and again, you know, if not, I'm not going
9 to push it, but maybe bring it down to at least 35 to
10 30 feet in height.

11 COMMISSIONER PARSONS: I wonder if the
12 next provision wouldn't get to your point. If
13 something is right at the water's edge or over the
14 water, it's going to be restricted to 25 feet in
15 height, and keep in mind, most of the structures are
16 going to be set back 75 feet.

17 VICE CHAIRPERSON HOOD: That's for else I
18 want to bring up when we get there.

19 COMMISSIONER PARSONS: Oh.

20 VICE CHAIRPERSON HOOD: The setback.

21 COMMISSIONER PARSONS: But I think there's
22 recognition of what you're talking about here. The
23 closer you get to the water, the lower you've got to
24 be.

25 VICE CHAIRPERSON HOOD: Right. Where are

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1 you looking?

2 COMMISSIONER PARSONS: Right after the
3 chart, 930.2.

4 VICE CHAIRPERSON HOOD: Okay. Okay. Yes,
5 I think that will take care of that, I think, but then
6 it goes back to the setback issue.

7 COMMISSIONER PARSONS: That's on the next
8 page.

9 VICE CHAIRPERSON HOOD: Yes, that's the
10 next page. So I will wait until the next page.

11 COMMISSIONER PARSONS: Now, didn't we
12 learn in the tree and slope, or don't you already
13 know, but I don't know, that our lowest height in
14 Residential R-1 is 40 feet?

15 CHAIRPERSON MITTEN: It is 40 feet, yes.

16 COMMISSIONER PARSONS: This is the lowest
17 height in the city, right? Forty feet?

18 CHAIRPERSON MITTEN: Yes, 40 feet is the
19 lowest. Well, the other thing is there's a tension
20 that exists between the height, the density, and the
21 lot occupancy, so as you start squeezing, you know,
22 lot occupancy and you want to provide a certain amount
23 of density, it's got to go somewhere; otherwise,
24 people won't ever be able to develop that amount of
25 density. So, you know, it's fairly restrictive on the

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1 lot occupancy except, you know, for these marina,
2 yacht club, boathouse, which we can talk about as
3 well.

4 So if you have a combination of .5 FAR,
5 which is not that much density, and you have the
6 potential to put that in a footprint that's .25, you
7 know, 25 percent of the land area, then you don't have
8 -- you're restricting the envelope and then where they
9 can put it, there's just not a whole lot of
10 opportunity for changes in design; it's pretty narrow.

11 So the height, I think, is supposed to give them more
12 ways of getting the density within a relatively small
13 footprint and being able to claim it all.

14 VICE CHAIRPERSON HOOD: Maybe I will be
15 able to address it in the setback.

16 CHAIRPERSON MITTEN: Okay. Well, we can
17 come back to it.

18 VICE CHAIRPERSON HOOD: Yes, if we need
19 to.

20 CHAIRPERSON MITTEN: Okay. Okay. I just
21 -- this may be a term of art and I just don't know it.

22 In 930.2, it says, "normal high water mark." Is
23 there another kind of high water mark? What does that
24 -- is that a term of art?

25 MR. LAWSON: That is actually a term that

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1 is used in many jurisdictions, but I believe that
2 Corporation Counsel has done some research on this and
3 is recommending better, more consistent wording with
4 the situation in D.C.

5 MR. BERGSTEIN: Unfortunately, Ms. Monroe,
6 who wrote that and I thought e-mailed the language to
7 you, isn't here, and I don't have that.

8 CHAIRPERSON MITTEN: Okay. So maybe we
9 can pick that up between proposed and final.

10 MR. BERGSTEIN: Actually, I do have it, if
11 you wish.

12 MR. LAWSON: I authorized her to send it
13 to you. I just didn't memorize it.

14 MR. BERGSTEIN: I'm sorry. I do have the
15 e-mail from Ms. Monroe. She is recommending the term
16 "mean high tide mark" or "mean high tide level" as
17 stated in Section 107.6 as being a determinable point
18 which has been traditionally used for measurement
19 purposes.

20 CHAIRPERSON MITTEN: Okay. So elsewhere
21 --

22 COMMISSIONER PARSONS: "Mean" is a much
23 better term than "norma."

24 CHAIRPERSON MITTEN: Elsewhere in the
25 ordinance, we use "mean high tide mark"?

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1 MR. LAWSON: I think she means actually
2 "mean high water level" is used in Section 107.

3 CHAIRPERSON MITTEN: Okay. "Mean high
4 water level." Okay. So that will replace "normal
5 high water mark" in 930.2.

6 MR. LAWSON: Yes, it would.

7 CHAIRPERSON MITTEN: Okay. Anything else
8 --

9 MS. STEINGASSER: If I may, Madam Chair,
10 just to add to the confusion, with the EEF language,
11 we use the phrase "mean high tide."

12 CHAIRPERSON MITTEN: I guess we weren't as
13 discerning, because we were hoping that no one would
14 put one near the water, and we will continue to hope
15 that.

16 COMMISSIONER PARSONS: Those are almost
17 synonymous.

18 CHAIRPERSON MITTEN: Okay. Okay.

19 COMMISSIONER HANNAHAM: You can go to tide
20 tables. You can go to the tide tables, so it's really
21 a special, you know, discrete and identifiable level.

22 CHAIRPERSON MITTEN: Okay. Okay. Anyone
23 else on anything in 930, Section 930?

24 (No response.)

25 CHAIRPERSON MITTEN: Okay. 931, floor

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1 area ratio. I had a question. I understand that it
2 has been determined that in some cases, we have
3 jurisdiction over the water, and this measurement --
4 I'm not sure that what is being said -- I think I know
5 what is being intended, but I'm not sure that it's
6 being expressed completely accurately in 931.1(b), but
7 my question, which is beyond the scope of what is in
8 front of us but I think is an important question, is,
9 is it intended that this manner of calculating density
10 is to be used wherever there is the opportunity to
11 construct on the water or in the water? In which
12 case, since we have land that's already zoned W-1, 2,
13 and 3, you know, is this something that we should
14 explore about, is there some water that is actually
15 zoned or potentially zoned W-1, 2, or 3, and is this
16 the way we want to measure the density there, and then
17 how is that identified legally? Because I'm guessing
18 -- I mean, Mr. Bergstein, are lots -- a lot, a record
19 lot, is that only fast land or can that be something
20 in the water, too?

21 MR. BERGSTEIN: Well, Ms. Monroe told me
22 there are such things as riparian lots, but I did not
23 investigate, because this was not the tact that was
24 taken, I did not investigate whether or not the
25 surveyor is authorized to establish squares and lots

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1 over water, although from Ms. Monroe's research and
2 experience, that has been done in other jurisdictions.

3 But I didn't research the question of
4 whether or not the surveyor would be authorized to
5 record those types of lots because my understanding is
6 that the approach OP was taking was not to actually
7 require lots over the water, but to relate the density
8 to the lot that was on the land. So I did not
9 research that question.

10 CHAIRPERSON MITTEN: I guess the reason
11 I'm asking is because -- let me just take this
12 incrementally. We have jurisdiction -- in some
13 circumstances, we have jurisdiction over water, yes?

14 MR. BERGSTEIN: Yes.

15 CHAIRPERSON MITTEN: Okay. So then we
16 have to have a way of legally defining the water that
17 we have jurisdiction over. Yes?

18 MR. BERGSTEIN: Well, the boundary of the
19 zone extends over the water. The question you are
20 asking is whether or not within that area is it
21 necessary to define that area by lots and squares. Is
22 that what you're asking? Because I don't know if it
23 is based upon this approach, which is just saying that
24 anything over the water that's within the boundaries
25 of the zone is subject to these requirements, but we

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1 will figure out their compliance in relationship with
2 the lots that they are adjacent to.

3 So therefore, taking that approach, it's
4 not necessary to do lots and square, but it would be
5 necessary to do that if you're actually trying to
6 define those characteristics of lot occupancy and FAR
7 and even side yards in relationship to a given lot
8 that's actually -- which these structures are actually
9 situated on.

10 CHAIRPERSON MITTEN: Well, I guess I'm
11 just -- I'm not at the moment even necessarily
12 addressing myself to the floor area ratio question;
13 I'm thinking more broadly, which is, don't we have to
14 have a mechanism of defining the area, whether it's
15 squares and lots or whatever it is, some kind of legal
16 description of the area over which we have
17 jurisdiction, because somebody can start to do
18 something and we can't say -- I mean, say there are
19 areas where we have the jurisdiction and areas where
20 we don't, which I don't know what those would be, but
21 somebody has to know, oh, that action, that
22 construction requires zoning, and in another area, it
23 doesn't, or you have to have zoning up to 50 feet from
24 the bulkhead, but you don't have to have it beyond. I
25 mean, don't we have to have the answers to that at

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1 some point?

2 MR. BERGSTEIN: I'm trying to follow what
3 you're saying. Section 107.6 tells you how to draw
4 the District boundary lines in the case of tidal water
5 areas, which is what we were relying on here.

6 CHAIRPERSON MITTEN: Okay. 107.6. Just a
7 second.

8 MR. BERGSTEIN: And the only question in
9 our minds is whether or not that instruction for how
10 you draw the zone district boundary lines would be
11 useful here for W-0 if it encompasses all the
12 situations, or if you need to refine that somewhat.

13 CHAIRPERSON MITTEN: Okay.

14 MR. BERGSTEIN: But from reading this, I
15 assumed that someone was capable of creating a map
16 that did this.

17 CHAIRPERSON MITTEN: Okay.

18 MR. BERGSTEIN: And maybe has.

19 CHAIRPERSON MITTEN: Where do you think
20 that map might be?

21 MR. BERGSTEIN: I don't know if any of the
22 current areas of the District -- I don't know if there
23 is any areas that have been mapped in association with
24 tidal water areas. I'm just thinking that if there
25 were, then they would have had to have followed this,

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1 but I don't know what they are, or even if, in 1958
2 when I assume this was -- let's see, actually. It was
3 promulgated in 1958 and then amended in 2000. That
4 was probably the editorial changes. So it may well
5 have been that in 1958, there were boundaries that
6 actually were drawn in this way because, you know,
7 this may not have just been a purely hypothetical
8 exercise in '58. So I just don't know the answer.
9 But these are the instructions for drawing it.

10 COMMISSIONER PARSONS: Let me help confuse
11 you.

12 CHAIRPERSON MITTEN: Okay.

13 COMMISSIONER PARSONS: When the Federal
14 Government took the District from the State of
15 Maryland, when it took the jurisdiction of the bed of
16 the Potomac and Anacostia Rivers, because unlike other
17 rivers, that's not divided down the thread of the
18 stream. That is, the State of Maryland owns all the
19 way to the Virginia shore. So the bed of the Potomac
20 is owned by the Federal Government, and therefore any
21 construction in it requires permits from the Federal
22 Government, except along the Southwest waterfront
23 where, when the urban renewal area was established, I
24 believe by Congress, they gave the jurisdiction to the
25 District of Columbia for the first 250 feet to the bed

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1 of the river. So we may have some unusual
2 responsibilities along the Southwest waterfront,
3 especially now that the urban renewal plan no longer
4 exists, that we don't have, say, in Anacostia.

5 Now, if you went to Florida Rock, for
6 instance, there's a pier head line -- excuse me -- a
7 bulkhead line and they filled out to the bulkhead
8 line. That's how they got their 75 feet, by filling
9 in the river.

10 CHAIRPERSON MITTEN: Okay.

11 COMMISSIONER PARSONS: So now we have
12 jurisdiction as a Zoning Commission over that.

13 CHAIRPERSON MITTEN: Okay.

14 COMMISSIONER PARSONS: The Federal
15 Government no longer does because it gave permission
16 to fill in the river.

17 CHAIRPERSON MITTEN: Okay.

18 COMMISSIONER PARSONS: Is that helpful?

19 CHAIRPERSON MITTEN: A little. Let me
20 just ask --

21 COMMISSIONER PARSONS: Anyway, I think
22 it's worth looking at because we may want to treat the
23 Southwest waterfront differently and therefore have
24 some provisions in our regulations, if the District of
25 Columbia has jurisdiction over the bed of the river,

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1 da-da, da-da, da-da.

2 CHAIRPERSON MITTEN: Okay.

3 COMMISSIONER PARSONS: We may want to do
4 some lot lining and so forth.

5 CHAIRPERSON MITTEN: Okay.

6 COMMISSIONER PARSONS: But I don't think
7 we could do that, you know, in Georgetown.

8 CHAIRPERSON MITTEN: Okay. Is the
9 Washington Channel tidal?

10 COMMISSIONER PARSONS: Yes.

11 CHAIRPERSON MITTEN: Okay. Okay.

12 Back to 931.1. Thank you all for your
13 contributions to my knowledge. Okay. So there is
14 still a question that we need to address for another
15 day, which is do we only want this type of density
16 measurement to apply in W-0, or do we want it to also
17 apply in those other instances where we have some
18 other zone on the waterfront? That's one point, but
19 for this exercise, the idea is you take the gross
20 floor area of the buildings that are on the land on a
21 lot, and is it the idea that any -- and any building
22 or structure that is on the adjacent -- the water
23 adjacent to that lot? Is that the idea?

24 MR. LAWSON: That's correct.

25 CHAIRPERSON MITTEN: Okay. And then you

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1 divide it by the area of the fast land lot.

2 MR. LAWSON: That's correct. It
3 essentially allows a landowner to put some of their
4 square footage out over water if they could get all of
5 the approvals that would be required. It would be a
6 difficult thing to do anyway, but it would leave that
7 option open. But if they did that, there would be a
8 corresponding less amount of square footage on the
9 land portion.

10 CHAIRPERSON MITTEN: Right. Okay. And it
11 also is -- what is an assumption that underlies is
12 that the lot on the fast land and the adjacent water
13 are in common ownership, whatever those rights are,
14 that they are owned by the person.

15 MR. LAWSON: There certainly is an
16 assumption that there would not be a separate
17 development from -- that's not associated with land
18 located out on the water, you're correct.

19 CHAIRPERSON MITTEN: Okay. And then let
20 me just ask Mr. Bergstein a question to save me
21 looking up the definition of "structure."

22 Is there any way that a floating home is
23 going to be considered as having gross floor area, and
24 do we want that or not?

25 MR. BERGSTEIN: Are you asking me if I

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1 would want --

2 CHAIRPERSON MITTEN: No. I'm asking you,
3 under our definitions -- I know it's not a building,
4 but would it be considered a structure, because
5 typically gross floor area, or I think maybe perhaps
6 by definition, is only associated with a building.
7 This is saying "structure."

8 Would a floating home be such a structure
9 that we would be calculating density for?

10 MR. BERGSTEIN: Off the top of my head, I
11 don't know why it would not be considered a structure
12 or building, for that matter.

13 CHAIRPERSON MITTEN: Why it would not?

14 MR. BERGSTEIN: Why it would not.

15 CHAIRPERSON MITTEN: Okay.

16 Mr. Lawson, is it your intention that
17 floating homes would be contributing density?

18 MR. LAWSON: It was actually specifically
19 our intention that they not contribute to density.

20 CHAIRPERSON MITTEN: Okay.

21 Back to you, Mr. Bergstein.

22 MR. LAWSON: So may be that we need to put
23 something in there exempting floating home from --
24 specifically exempting floating homes just to make
25 sure that's clear.

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1 CHAIRPERSON MITTEN: Otherwise, the
2 density calculation would constantly be changing as
3 homes were floating off to another destination. I
4 guess it would be kind of like a trailer park, you
5 know, right? Kind of like that.

6 MR. BERGSTEIN: I guess we can work out
7 how to do this, but there is a definition for
8 building, there is a definition for structure, so we
9 can all either exempt it from this provision that
10 actually discusses FAR or just exempt it from the
11 definition of building and structure so it's clear
12 that it's not.

13 CHAIRPERSON MITTEN: Okay.

14 MR. BERGSTEIN: I'll also review those
15 definitions to see if perhaps it wouldn't be included
16 anyway and we don't need to do anything.

17 CHAIRPERSON MITTEN: Okay. Thank you.

18 Anyone else in 931, floor area?

19 (No response.)

20 CHAIRPERSON MITTEN: All right.
21 Percentage of lot occupancy, 932. There is a fair
22 amount of flexibility included here for recreational
23 use, marina, yacht club, or boathouse buildings and
24 structures, because they would be afforded 50 percent
25 lot occupancy whereas every other use would have only

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1 25 percent.

2 My first question is what is a
3 recreational use? Because everything that we think is
4 so easily understood is not always, as we have learned
5 with eating and drinking establishments.

6 COMMISSIONER PARSONS: Well, doesn't
7 marina, yacht club or boathouse define recreational
8 use? If it does, we ought to take "recreational use"
9 out of here.

10 CHAIRPERSON MITTEN: I think perhaps --
11 well, I will let Mr. Lawson address that.

12 MR. LAWSON: There is an existing
13 definition for recreational building or use.

14 CHAIRPERSON MITTEN: Oh, there is?

15 MR. LAWSON: Yes. In the zoning
16 regulations.

17 CHAIRPERSON MITTEN: Well, let's see what
18 that is.

19 MR. LAWSON: I can read that.

20 CHAIRPERSON MITTEN: Would you do that for
21 us?

22 MR. LAWSON: Sure. "Any establishment
23 providing facilities for recreation, including but not
24 limited to picnicking, boating, fishing, bicycling,
25 tennis, and activities incidental to the foregoing but

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1 not including golf, driving ranges, or any mechanical
2 amusement device."

3 COMMISSIONER PARSONS: Bet you we got a
4 lot of those in the District of Columbia.

5 CHAIRPERSON MITTEN: Okay.

6 COMMISSIONER PARSONS: But we could have.
7 I guess that answers your question.

8 CHAIRPERSON MITTEN: Okay.

9 COMMISSIONER PARSONS: We are all learning
10 a lot here today.

11 CHAIRPERSON MITTEN: It's fascinating.

12 COMMISSIONER PARSONS: I never heard of
13 that.

14 CHAIRPERSON MITTEN: Okay. And the lot
15 occupancy would be calculated sort of the same way as
16 the density would be calculated where if there is
17 something on the water, the footprint of that building
18 is going to count against the lot occupancy of the
19 adjacent lot. That's 932.2(b). So any comments or
20 questions about 932?

21 COMMISSIONER PARSONS: No, thank you.

22 CHAIRPERSON MITTEN: All right. 933, rear
23 yards; 934, side yards. I just had a little addition
24 where it says "within the W-0 district for any
25 building or structure located in whole or in part on

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1 land," is what I would suggest to get -- so somebody
2 doesn't try and say, "Well, it's not entirely on land,
3 so I don't have a side yard requirement," although
4 most of it is, because I think that's our intention,
5 is to capture that.

6 Okay. So now we're at 935, the waterfront
7 setback, and so I don't forget, I just will remind us
8 all that Mr. Hood had raised a question about whether
9 the parking could be located in the required setback.
10 I'll ask if anybody has comments on the setback.

11 VICE CHAIRPERSON HOOD: What is the
12 setback in the W-1 zone?

13 CHAIRPERSON MITTEN: I don't know that
14 there is a setback.

15 COMMISSIONER PARSONS: There is none.

16 VICE CHAIRPERSON HOOD: Okay. There is
17 none. No wonder I can't find it. Okay. All right.

18 CHAIRPERSON MITTEN: We have a 75-foot
19 setback in the Capital Gateway overlay, however.

20 VICE CHAIRPERSON HOOD: Okay.

21 MR. LAWSON: And it may be in other zones
22 that some uses would require a setback as part of a
23 rear yard provision. I'm not sure how that
24 interpretation is done.

25 CHAIRPERSON MITTEN: Okay.

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1 VICE CHAIRPERSON HOOD: I guess my initial
2 look at W-0 was that -- was 75 feet enough? That's
3 kind of just where I was.

4 CHAIRPERSON MITTEN: Right. Well, we
5 certainly had testimony from -- let's see -- it was
6 the Natural Resources Defense Council that was
7 recommending 100 to 250 feet.

8 VICE CHAIRPERSON HOOD: That's kind of
9 exactly -- I was thinking more like 300, but that's
10 kind of the lines I was thinking, you know. I just
11 don't think 75 is enough. And I'm visualizing the
12 waterfront and I know how the Washington Harbour is,
13 but I don't know if 75 feet -- it's not a whole lot.
14 I don't think so.

15 CHAIRPERSON MITTEN: I know what you're
16 saying. Maybe we can ask Mr. Lawson.

17 MR. LAWSON: I will just give a couple of
18 quick comments on that.

19 CHAIRPERSON MITTEN: Okay.

20 MR. LAWSON: Certainly the 75 feet was
21 obviously chosen to correspond to Capital Gateway and
22 the setback, but it's also to recognize that the W-0
23 zone is not intended per se to be a preservation zone;
24 it is intended to be an urban park type zone that
25 allows a number of different kinds of uses, encourages

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1 access to the waterfront, while minimizing impacts on
2 the waterfront.

3 The 300 feet -- and I'm not an
4 environmentalist, so I can't speak to it as well as
5 that group could, the 300-foot is starting to me to
6 sound like a preservation type situation where you're
7 trying to preserve the waterfront in a natural
8 environment. That's not necessarily what we're trying
9 to do over the entire length of the Anacostia and the
10 Potomac Rivers. Certainly for vast stretches, that's
11 absolutely true, and it may be that the W-0 zone isn't
12 even appropriate for those more preservation-type
13 areas. But for areas where we're encouraging use of
14 the waterfront, access to the waterfront, people being
15 able to get down there to see and experience the
16 waterfront, we feel that -- OP feels that 75 feet is
17 an appropriate setback that allows for the kinds of
18 uses that we want to make sure occur, things like
19 pathways, bicycle pathways, you know, that kind of
20 stuff, without, you know, eliminating kind of the edge
21 of the city, getting, you know, some proximity to the
22 water.

23 VICE CHAIRPERSON HOOD: Maybe I'm just
24 visualizing something different. When we're dealing
25 with these regs, I keep reflecting back on Virginia

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1 Beach and Atlantic City and the setback and the space
2 and all that kind of stuff. Maybe I'm confusing the
3 two. But 75 feet -- and what you're asking for is
4 access, to be able to get down to the waterfront, and
5 looking at the safety issue, if we have a lot of folks
6 down there, you know, you have a big event and you're
7 trying to get people to the waterfront, is 75 feet
8 enough for a big crowd? I mean, those are kind of
9 things that are actually going through my mind.
10 Three-hundred may be a little too much, but I would at
11 least maybe say a hundred.

12 COMMISSIONER PARSONS: I would agree with
13 a hundred. I'm thinking the Inner Harbor of
14 Baltimore, before you get to the restaurants. You
15 need that kind of ample passage for not only every
16 day, but for celebrations --

17 CHAIRPERSON MITTEN: Can I just have you
18 turn towards the microphone, please?

19 VICE CHAIRPERSON HOOD: Is the Baltimore
20 Harbor about a hundred? Is it about a hundred feet,
21 Mr. Parsons?

22 COMMISSIONER PARSONS: That's what it
23 feels like to me, back to the restaurants, to the
24 buildings. It's less -- 75 just seems -- nothing
25 worse than guessing and providing testimony.

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1 VICE CHAIRPERSON HOOD: We ought to switch
2 seats.

3 COMMISSIONER PARSONS: And if you recall,
4 I think 75 came from Florida Rock. That's as far back
5 as they were willing to go.

6 CHAIRPERSON MITTEN: And the idea is, just
7 following up on what Mr. Lawson said, is there is a
8 different dynamic at work, I think, for like a
9 Florida Rock kind of project than for the kind where
10 we're asking -- we're basically encouraging people to
11 come down to the water and perhaps, you know, have a
12 recreational use or whatever, whereas for Florida
13 Rock, we just want them not -- they are not going to
14 be actively promoting having people come there for the
15 use of the waterfront; we just want them to be not
16 interfering with that in these other areas where we
17 might actually be promoting it. So a hundred sounds
18 fine.

19 COMMISSIONER PARSONS: I recall with
20 Florida Rock, they proposed these tent-like structures
21 out for food service and so forth that were in the
22 middle of that, and the W-0 provides for that. So
23 it's not just a hundred-foot-wide walking space.

24 CHAIRPERSON MITTEN: Okay. So we would
25 like to go to a hundred on 935.1, would be 100 feet,

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1 and then the same in 935.3. It would be a hundred
2 there, replacing 75. And is everyone comfortable with
3 that minimum of 20 feet?

4 COMMISSIONER PARSONS: Well, yes and no.
5 I was going to suggest in .2 why we didn't include
6 boathouse, yacht club, marina, so forth? I mean,
7 buildings that -- I guess in my view, in these areas
8 where the public bike trail is not really welcome,
9 you're better off to put the building closer to the
10 water and put the bike trail behind it or the
11 pedestrian-way behind it than into a situation where
12 everything has to be fenced to avoid the public from
13 getting onto the docks and so forth.

14 So I wondered why you left it at just
15 public wharf, dock or pier, and water taxi.

16 MR. LAWSON: OP's thought process behind
17 that was any significant structure should provide at
18 least a minimum setback from the edge of the water,
19 mostly in, you know, again in attempt to minimize
20 impacts on environmental or long-term ecological
21 impacts on the waterway itself. In other words,
22 setting it back 20 feet allows at least a bit of a
23 buffer partly during the construction process for
24 efforts to minimize impacts on the river, but also
25 during long-term operation. Just gives that little

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1 bit of a buffer, even for those uses that do require
2 more direct access.

3 We would assume that most boathouses,
4 marinas, whatever, would be applying for that special
5 exception to go down to 20 feet or something close to
6 it, but we would like them to go through the process
7 of showing how they are doing that in ways that
8 minimize impacts and allow for, even more importantly,
9 for public access that we do want along the water in
10 those particular cases, how that access would be
11 adequately provided around the back of the building
12 and how they are designing to make the back of the
13 building an interesting environment, I guess, for
14 waterfront users.

15 COMMISSIONER PARSONS: Okay. I
16 understand.

17 Now let's go to the term "public wharf,
18 dock, or pier." Are there any in the District of
19 Columbia?

20 MR. LAWSON: I don't believe so.

21 COMMISSIONER PARSONS: No.

22 MR. LAWSON: But perhaps there should be.

23 CHAIRPERSON MITTEN: Not yet, there are
24 not.

25 COMMISSIONER HANNAHAM: What about the

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1 fish mongers?

2 COMMISSIONER PARSONS: I guess in a way
3 they are. All right. Let's leave it.

4 CHAIRPERSON MITTEN: Okay. They're
5 getting hungry. They want to --

6 COMMISSIONER PARSONS: You bet we are.

7 CHAIRPERSON MITTEN: Okay. We got 936,
8 courts; 937, roof structures; Chapter 20; Chapter 21.
9 Speak up if you have anything.

10 COMMISSIONER PARSONS: Well, let's talk
11 about these parking spaces.

12 CHAIRPERSON MITTEN: Oh, we forgot the
13 parking. I know that what you want to talk about is
14 Chapter 21, except that we had forgotten about what
15 Mr. Hood had raised about whether the surface parking
16 could be contained within the required setback under
17 935.

18 COMMISSIONER PARSONS: I just wondered
19 what the genesis was of these, in a marina, one for
20 each four berths. Is that some standard you found
21 elsewhere? Because the trouble with marinas is on
22 Memorial Day, you need one for one. It's like
23 shopping at the mall on Thanksgiving.

24 MR. LAWSON: It actually is a very
25 difficult situation that all communities with marinas

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1 have to deal with: How do you provide parking for the
2 infrequent major event without paving over your entire
3 waterfront area? And certainly my research experience
4 is that many communities require this level of parking
5 or slightly higher; some other communities require no
6 parking at all, and I don't know if they just leave it
7 to chance or what they do.

8 The one for each four berths, if memory
9 serves me right, and I would have to check, I believe
10 that's the existing regulation for boat clubs and
11 marinas, so I --

12 COMMISSIONER PARSONS: Oh.

13 MR. LAWSON: -- left that unchanged.

14 COMMISSIONER PARSONS: Okay. And the
15 reason for the one space for every 2,000 square feet
16 of a boathouse is what?

17 MR. LAWSON: That's also really common --
18 I shouldn't say really common -- those few areas that
19 regulate boathouses tend to do it that way. They tend
20 to regulate it on square footage because it's a
21 different kind of user that uses a boathouse.

22 Also, it related a little bit better to
23 how we regulate parking right now for other
24 recreation-type uses on the size of the building as
25 opposed to some other means that might be available

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1 for regulating parking.

2 CHAIRPERSON MITTEN: I would also add
3 that, you know, the special exception requirements for
4 marinas and yacht clubs and boathouses are the
5 specifics of the different sections within Chapter 9,
6 but also 3104, which says that -- I believe it says
7 that the use shall not be objectionable because of
8 noise, traffic, blah, blah, and parking. So, you
9 know, if the issue is raised about large events, that
10 they will have to have some kind of parking management
11 plan as part of their thing.

12 COMMISSIONER PARSONS: It says so, yes.

13 MR. LAWSON: That's one of the specific
14 pieces of information that we would require an
15 applicant to provide.

16 CHAIRPERSON MITTEN: So I think we just
17 pick it up there.

18 COMMISSIONER PARSONS: Can we go to
19 bicycle parking spaces, or are you not ready to move
20 on?

21 CHAIRPERSON MITTEN: I just don't want to
22 forget what Mr. Hood raised, which I think, to go back
23 to the setback, if I could just suggest --

24 VICE CHAIRPERSON HOOD: I was just going
25 to ask you to refresh my memory because I have

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1 actually forgotten.

2 CHAIRPERSON MITTEN: Okay. I think your
3 point was should we allow the required parking to be
4 located in the required setback, and I think the
5 answer is no, because the setback doesn't -- a setback
6 doesn't normally apply to --

7 COMMISSIONER PARSONS: I thought 2116.1
8 did that.

9 CHAIRPERSON MITTEN: 2116.1.

10 COMMISSIONER PARSONS: The next one,
11 location of parking spaces. Should be located on the
12 same lot.

13 CHAIRPERSON MITTEN: Yes, on the same lot,
14 but there is a required setback on that lot. So the
15 question is, the building is going to be set back, the
16 building or structure is going to be set back.

17 COMMISSIONER PARSONS: Okay.

18 CHAIRPERSON MITTEN: So what we could do
19 is just, say, in 935.1, just add a sentence that says,
20 "The required parking shall not be located within the
21 setback area."

22 COMMISSIONER PARSONS: Okay.

23 CHAIRPERSON MITTEN: Okay.

24 VICE CHAIRPERSON HOOD: I agree.

25 CHAIRPERSON MITTEN: Okay.

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1 VICE CHAIRPERSON HOOD: But it can come
2 behind maybe a building or structure?

3 CHAIRPERSON MITTEN: Yes.

4 COMMISSIONER PARSONS: Sure.

5 VICE CHAIRPERSON HOOD: Okay. Right.

6 CHAIRPERSON MITTEN: Okay. Bicycle
7 parking.

8 COMMISSIONER PARSONS: I just wondered
9 what "one suitably designed and sited bicycle rack
10 parking space" means? In other words, the way it
11 reads to me, one bicycle is required in that rack.

12 CHAIRPERSON MITTEN: That's per ten
13 berths.

14 COMMISSIONER PARSONS: No, I -- that's one
15 bike per ten berths?

16 MR. LAWSON: It's essentially one bike
17 rack space per ten berths.

18 COMMISSIONER PARSONS: Oh, space, bike
19 rack space.

20 MR. LAWSON: Yes.

21 COMMISSIONER PARSONS: Maybe that's what
22 should be --

23 CHAIRPERSON MITTEN: One suitably designed
24 and sited bicycle rack parking space.

25 COMMISSIONER PARSONS: I didn't read.

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1 Excuse me. Moving on. Thank you for reading aloud to
2 me.

3 CHAIRPERSON MITTEN: I'm glad that you
4 care about bicycle parking spaces.

5 Okay. Chapter 22, off-street loading.
6 Chapter 24, planned unit development procedures. 25,
7 miscellaneous zoning requirements. Chapter --

8 COMMISSIONER PARSONS: Wait. You're going
9 too fast for me.

10 CHAIRPERSON MITTEN: Oh. Sorry.

11 COMMISSIONER PARSONS: Excuse me. I'm
12 going too slow for you. Did you go by Chapter 24,
13 planned unit development procedures?

14 CHAIRPERSON MITTEN: Yes.

15 COMMISSIONER PARSONS: I'm very concerned
16 about a total of two acres being a requirement.

17 CHAIRPERSON MITTEN: What would you like?

18 COMMISSIONER PARSONS: I mean, a two-acre
19 marina -- and I realize this is applying to R-1, R-2,
20 R-3. I don't know what I want, but two acres is an
21 enormous marina.

22 CHAIRPERSON MITTEN: Well, I think -- you
23 know, we've had debates in the past about whether or
24 not we should even have the minimum area requirements
25 anymore, and wouldn't it be desirable if someone

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1 wanted to do something in W-0 that they would have the
2 sort of maximum amount of scrutiny that you would get
3 through a planned unit development. So maybe we don't
4 want to make it hard for them, so we could just --
5 they would just be in the regular category of 15,000
6 square feet, which is everything that's not otherwise
7 listed. Is that what you're -- because that's what
8 W-1, W-2 --

9 COMMISSIONER PARSONS: Yes.

10 CHAIRPERSON MITTEN: Okay.

11 COMMISSIONER PARSONS: That's what I
12 thought, yes.

13 CHAIRPERSON MITTEN: Okay. So we could
14 just take that out of the list, unless the Office of
15 Planning has a compelling reason --

16 MR. LAWSON: We do not.

17 CHAIRPERSON MITTEN: Okay.

18 Chapter 25. Chapter 31. Chapter 32.

19 COMMISSIONER PARSONS: Now, the third to
20 last line -- maybe I'm not reading again.

21 CHAIRPERSON MITTEN: We can read it aloud,
22 if you would like.

23 COMMISSIONER PARSONS: In a zoned W-0, and
24 it's for the exclusive use as a boathouse, marina -- I
25 think we ought to add "or yacht club." Don't we mean

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1 that?

2 CHAIRPERSON MITTEN: Do we mean that, Mr.
3 Lawson?

4 MR. LAWSON: I actually did not mean that,
5 and this gets down to some, you know, kind of
6 fine-line differences between what a marina and what a
7 yacht club normally is. A yacht club, at least
8 certainly in my experience with my research, typically
9 involves a much higher level of day-to-day use. It's
10 usually restricted to specific members who are using
11 the club itself as a club or their boats on a regular
12 basis. A marina can serve some of those purposes, but
13 it tends to generate less traffic, it tends to
14 generate less kind of a constant ongoing traffic
15 because people are not usually going out on their
16 moored boats every single day.

17 This regulation is essentially a way to
18 allow -- the intent, anyway, is essentially to allow a
19 boathouse or a marina to be located in a rather
20 isolated location that may not have really excellent
21 frontage onto a major road or excellent accessibility.

22 I don't believe that a yacht club would be an
23 appropriate use for a location like that.

24 CHAIRPERSON MITTEN: Let me just ask Mr.
25 Bergstein to weigh on this, because I thought that

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1 this section had to do with whether or not you have a
2 record lot.

3 MR. BERGSTEIN: Actually, and this is one
4 of the debates that Mr. Lawson and I were having, I
5 thought this section had to do with whether or not you
6 could have more than one principal structure on a lot,
7 and only later have I been informed of the
8 interpretation that you're saying, that this not only
9 says no building permit may be issued unless there's a
10 single building on a single lot, but it's being read
11 to compel that there be a lot, and I don't know if
12 that's true that this is the provision that stands for
13 that.

14 CHAIRPERSON MITTEN: Do you think if you
15 studied it more, you would be sure?

16 MR. BERGSTEIN: I don't know because of
17 how it's written. I mean, I could see how it could
18 have that interpretation, but the exceptions to it,
19 which is not just 2516 -- that's one of the problems
20 with this provision, because the other exception is
21 2517, all go to the instances where someone wants to
22 put more than a single building on a lot and those
23 sections define how you create theoretical lots.

24 So it's hard to understand how -- I mean,
25 it could have that meaning, but at least the "except

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1 fors," at least the one that deals with 2516, goes to
2 the two buildings on a single -- or more than one
3 principal building on a single lot interpretation that
4 I have had of this section.

5 But what I thought might be happening is
6 that we were going to get a better explanation about
7 why this language was being proposed, because this
8 language was being proposed from one of the
9 commentaries, and I was hoping perhaps that we would
10 receive some insight about why it was thought that
11 this section would have that effect.

12 It certainly isn't -- it couldn't have
13 been -- well it's by law the zoning regulations, but
14 it could have been stated a lot clearer if that was
15 the intent here.

16 CHAIRPERSON MITTEN: Let me just ask if we
17 could do the following, which is if you, as an
18 attorney, don't -- it's not clear to you what 3302.3
19 is supposed to do whether we change it or we don't,
20 can we please study the history of that so that it's
21 accomplishing whatever it's intended to accomplish
22 right now, and if there is something that we want to
23 accomplish further with it through this, that we would
24 then amend the language, but for now that we don't
25 amend the language because we obviously don't know

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1 what it is there for in the first place, which is, you
2 know, not a good position to be in. Can we agree to
3 do that?

4 MR. BERGSTEIN: Yes, with the
5 understanding that if we all agree that it does what
6 it's supposed to do, I think it's something that you
7 can put in the final rule.

8 CHAIRPERSON MITTEN: Sure. Yes.
9 Absolutely.

10 Okay. Anything else?

11 COMMISSIONER PARSONS: Yes.

12 CHAIRPERSON MITTEN: Mr. Parsons.

13 COMMISSIONER PARSONS: I don't know why I
14 didn't think about this in the beginning and I
15 hesitate to bring it up because I don't want to stall
16 this. There was a floating restaurant on the
17 Southwest waterfront, Gangplank it was called, was on
18 a barge and had all the utility hookups. Maybe you
19 had a beer there once.

20 CHAIRPERSON MITTEN: Never.

21 COMMISSIONER PARSONS: Anyway, it was two
22 stories and was funky. These regulations don't speak
23 to that kind of use and I think we might want to
24 anticipate that.

25 CHAIRPERSON MITTEN: Okay.

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1 COMMISSIONER PARSONS: Not to hold this
2 up. I wish I had thought about it a long time ago,
3 and I didn't, because that's the kind of use that we
4 would certainly want to regulate, especially as it
5 goes to parking. It's a whole different kind of use
6 than we've been dealing with here.

7 Now, yacht contains -- the Tappa Yacht
8 Club contains a restaurant, and I don't mean to go
9 that way with it, but these are like floating homes
10 except they serve 250 people dinner. So I just felt a
11 need to bring that up and say let's move on with what
12 we've got and worry about it later, maybe, but --

13 CHAIRPERSON MITTEN: Yes. I think we
14 should think about that because, I mean, not thinking
15 specifically about W-0, but thinking about W-1, 2 and
16 3, and we've got, you know, restaurant, just as a
17 for-instance, as a permitted use. We really don't
18 focus on -- we don't focus on the relationship in any
19 other zone other than W-0 on the -- we don't focus on
20 the relationship of a building that may be in part or
21 in whole on the water at all, and so in the
22 circumstance where, under 107-point whatever the
23 reference was, we would have jurisdiction out over the
24 water, then in essence a restaurant is permitted,
25 however you can get it there, to some extent. So it

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1 may be desirable to have something that relates to the
2 floating aspect of it. We will have to think about
3 that some more.

4 COMMISSIONER HANNAHAM: Once upon a time,
5 we had a politician in D.C. who was advocating a
6 floating casino.

7 COMMISSIONER PARSONS: Now you've really
8 started.

9 VICE CHAIRPERSON HOOD: Yes. We need to
10 bring him back.

11 CHAIRPERSON MITTEN: If our finances keep
12 going the way they are, I bet you will hear about it
13 again.

14 COMMISSIONER PARSONS: Slots for tots.

15 CHAIRPERSON MITTEN: Anything else?

16 VICE CHAIRPERSON HOOD: With no setback.

17 COMMISSIONER PARSONS: Do we need to vote
18 on this?

19 CHAIRPERSON MITTEN: Yes, I think that's
20 the idea. That's actually the idea, is that we were
21 thinking we might vote on this tonight.

22 We have made a number of suggestions, and
23 I know that between Mr. Bergstein and the Office of
24 Planning folks, they have noted all of those, and I
25 would at this point move approval of the W-0 text and

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1 related amendments as we've discussed this evening.

2 COMMISSIONER PARSONS: Second.

3 CHAIRPERSON MITTEN: All right. Let's
4 just vote on that and then we can make a few comments.

5 Any further discussion?

6 (No response.)

7 CHAIRPERSON MITTEN: All those in favor,
8 please say aye.

9 (Chorus of ayes.)

10 CHAIRPERSON MITTEN: I will vote Mr. May
11 in the affirmative as well since he said he would vote
12 in the affirmative as long as it was generally
13 unchanged.

14 All those opposed, please say no.

15 (No response.)

16 CHAIRPERSON MITTEN: Ms. Sanchez, would
17 you record the vote?

18 MS. SANCHEZ: Yes. Staff would record the
19 vote five to zero to zero, Commissioner Mitten moving,
20 Commissioner Parsons seconding, Commissioners Hood and
21 Hannaham in favor, and Commissioner May also in favor
22 by absentee ballot for approval of Zoning Commission
23 Case 02-42.

24 CHAIRPERSON MITTEN: Thank you.

25 Now, I'm going to ask staff to -- because

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1 I'm concerned that there is, you know, departure -- I
2 don't know if it's significant departure or not --
3 from the advertisement of the public hearing. I
4 think we need to determine whether or not there is
5 anything that is so significantly either added or
6 changed that we need to advertise separately and
7 perhaps have a -- well, just if we need to resolve any
8 issues regarding notice, let me just leave it at that,
9 but that those things that fall within the parameters
10 of the public hearing notice, that those would
11 certainly continue to move forward.

12 Is there anything else anyone would like
13 to add at this point?

14 COMMISSIONER PARSONS: In that context, I
15 hope we can still proceed with the May 19th hearing of
16 the university.

17 CHAIRPERSON MITTEN: Right. I don't see
18 that there is any impediment to that, and that's why I
19 said, you know, anything that's within the parameters
20 of the original notice should go forward, and we will
21 just -- anything that's a significant departure from
22 that, we will just separate that out and treat it
23 independently.

24 COMMISSIONER PARSONS: All right.

25 MR. BERGSTEIN: So would we take it, then,

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1 that in essence, if there is anything identified that
2 would require another hearing, that in essence you
3 have voted to set those down for hearing and that we
4 could proceed with a notice of hearing for those
5 provisions, or would you want those --

6 CHAIRPERSON MITTEN: No. That's good.
7 That's perfect. Thank you.

8 All right. Anyone else?

9 (No response.)

10 CHAIRPERSON MITTEN: Then this special
11 public meeting is now adjourned.

12 (Whereupon, at 8:15 p.m., the special
13 public meeting adjourned.)

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